Q. Now, are you real sure that it was on the day of the accident, or the day before, that you started the fire?
A. I started the fire the day of the accident.
Q. You are sure about that?
A. Yes, I am sure about that.
Q. No mistake about it?
A. No mistake.
Q. And who started it the day before?
A. Stensland.
Q. You say you started the fire by using waste?
A. Yes, cotton waste.
Q. Which day was this?
A. It was the day of the accident.
Q. Well, why didn't you use coal oil, if all the rest did?
149 A. Well, I had the waste handy. I took the first I could get hold of, you see.
Mr. Arctander: Will you speak plainly?
A. When I had cotton waste handy, I used to take that, and it burns awfully nice.

(Mr. Hadley:)

Q. You say that Stensland had started the fire before using kerosene?
A. Yes.
Q. Are you sure it was not this same day?
A. It was the day before.
Q. You say there was no coal oil left to light the lanterns when you returned the night before?
A. There was no more left.
Q. Why wasn't there?
A. Well, it was all used up. We didn't have any more with us.
Q. You mean it was all used up in one day?
A. Well, I don't know if the can was filled that day or was filled before that day, but we didn't have enough to fill the lantern that night before the accident happened. I know that.
Q. You say you had stepped into the galley or into the cabin just before the explosion took place?
A. Yes.
Q. To oil the engine?
A. Oil the engine.
Q. How long had you been there?
A. O, about two minutes.
Q. And you saw the plaintiff pouring kerosene on the fire?
A. Yes.
150 Q. And drop a lighted match?
A. Yes.
Q. And the explosion took place immediately?
A. Yes.
Q. Do you know for sure whether the match reached it before the explosion took place?
A. What?

Q. How?
A. Well, he just—he light the match and drop it and it went off all at once.
Q. As a matter of fact, it was all so sudden you don't know which happened first, do you?
A. Well, when I saw it, it went off at once, the stove and the whole business.
Q. It happened all at once?
A. Yes.
Q. Now, how long did you say it takes for this stove to cool off when there has been a hot fire in it?
A. Well, about three or four minutes, it don't take more.
Q. Three or four minutes after there has been a hot fire, for it to cool off?
A. Yes sir.
Q. What had you had for lunch?
A. We had coffee and vegetable soup.
Q. Soup?
A. Yes.
Q. The soup was hot when it was served?
A. Yes, it was hot.
Q. And Stensland took the lunch up on deck from the stove?
A. Yes.
651 Q. Had he cooked the lunch?
A. Well, I was cooking, but I didn't know how to put up that vegetable soup; you see he was with me there and helped me.
Q. Who steered the boat while the meal was being cooked?
A. John Jorgenson.
Q. Jorgenson?
A. Yes.
Q. You were not steering the boat yourself?
A. No.
Q. Any of the time?
A. Well, when we went out I was steering for a little while, but just for a little while.
Q. What did you do immediately after eating your lunch?
A. We was running along the shore and was hunting for ducks. There was a few ducks along there.
Q. How long?
A. About two hours and a quarter.
Q. Before the plaintiff went down to start this fire?
A. Yes.
Q. What time did he go down to start the fire?
A. Two o'clock.
Q. Two o'clock. How long did it take you to eat your lunch?
A. O, about ten or fifteen minutes.
Q. Ten or fifteen minutes?
A. Yes.
Q. You say you saw Stensland bring that can aboard and place it on the bench?
A. Yes.

Q. Do you know where he got it, or where he got the contents?

A. No, I don't know where he got it.

152 Q. All you know is that he put it there?

A. He put it there. He came down and put it there.

Q. You say you didn't see the plaintiff put wood in the stove, you just saw him as he was pouring the oil?

A. Yes, I saw him when he poured the oil in.

Q. Was the plaintiff looking at the stove or at the engine at the time when he poured this oil in?

A. Yes, he was just pouring a little oil in there.

Q. How is that?

A. Just pouring a little oil in when he struck the match and dropped it.

Q. Where was he looking when he did it?

A. He was looking in the stove.

Q. Looking in the stove?

A. Yes.

Q. You didn't examine the stove when the plaintiff went down to start the fire, did you.

A. No.

Q. You don't know of your own knowledge, whether there was any fire in it then or not, do you?

A. Well, the fire must be out by that time, you see.

Q. Well, you don't know whether it was there at that time, do you?

A. No, I didn't look in the stove.

Q. You just assumed that it was out?

A. Well, when I went up the fire was almost burned out, that was only ashes left; so I can't see how the fire could be there.

Q. But you don't know, you just assume?

A. No, I didn't see it.

153 Q. Was it hot in the cabin at the time?

A. No, it was not very hot.

Q. How do you know the fire was almost burned out, did you take the lid off the stove and look in when you went up?

A. Well, Stensland took the pots away from the stove and then I had to put the lids on, so I had to see something then.

Q. But there was some fire in there?

A. Well, there was some ashes just, but it was not real cold, but at the same time there was not any fire in it.

Q. Well, there were embers there?

A. Yes.

Q. How do you know there were no life preservers aboard?

A. I didn't find any.

Q. Did you look on the upper bunk where they should have been?

A. There was nothing in the cabin.

Q. Did you look there?

A. We couldn't get down when the fire was——

Q. How do you know, then?

A. Well, saw it before and afterwards.

Q. Why didn't you call their attention to it, if you knew it before?

A. Well, we called, but the boss said never mind, didn't need any.

Q. When did you?

A. When we went out.

Q. But you don't know whether they were on that upper bunk there or not, do you.

A. It was not on the upper bunk, I know that.

Q. Did you look to see?

A. Sure.

Q. The plaintiff jumped in the Bay right away, to put out the fire, didn't he?

A. Well, he was running around on the deck, trying to get something to get ahold of.

Q. Didn't Mr. Stensland shove him overboard into the water?

A. No, didn't shove him overboard.

Q. Didn't help him get over?

A. No.

Q. Didn't they throw a plank over to him?

A. Well, but the plank, they throwed the plank over, John Jorgenson throwed the plank over, but the boat was about 40 feet away from him at that time.

Q. He got the plank, however?

A. He swam to the plank. The plank was about 40 or 50 feet from him where he jumped over.

Q. As a matter of fact, you don't know what was in that can, do you?

A. Well——

Q. You don't know, of your own knowledge, what was in that can, do you?

A. I don't know what it was, no sir.

Q. You just assume that it was gasolene because there was an explosion, don't you?

A. Yes.

Q. That is the case, isn't it? It might have been coal oil for all you know?

A. I never seen coal oil explode that way.

Q. You know that coal oil will explode, under certain conditions?

A. Well——

Q. Don't you?

A. Yes, I know it will explode if there is—if they pour coal oil into a real hot place, then it explodes, of course.

Q. What was that?

(Answer read.)

Q. Was there a load report when this explosion took place? or was it just a big sudden flash?

A. Well, it was enough pressure to throw me out on deck.

Q. What?

A. I got throwed out from the hole up on deck.
Q. Was there any noise, or do you know?
A. It was noise all right, but I can't tell just exactly how it sounds.

(Witness excused.)

JOHN JORGENSON, produced as a witness on behalf of Plaintiff, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

(Mr. Aretander:)

Q. Where do you live, John Jorgenson?
A. I live in Seattle.
Q. Are you going away from here now?
A. Going away this week.
Q. This week. Where?
A. To Alaska.
156 Q. On a halibut fishing boat?
A. Yes.
Q. You expect to be gone during the summer?
A. Yes.
Q. Do you know the plaintiff, Ole Sandanger?
A. Yes, I know him from back home.
Q. From back home where?
A. In Norway.
Q. In Norway. You have known him for many years?
A. Known him for many years.
Q. Where were you working during the summer of 1916, and for whom?
A. Carlisle Packing Co.
Q. Carlisle Packing Company. And where?
A. Alaska, Cordova.
Q. And when did you commence to work for them that year?
A. February, 8th of February.
Q. Do you remember the time plaintiff was hurt there by being burned more or less?
A. Yes.
Q. Do you remember what time that was?
A. It was the 7th of March.
Q. 7th of March, 1917?
A. 1917.
Q. Now, during the months of February and March and up to that time that he was hurt, where had you worked most of the time at what had you worked during February and March after you started there in 1917?
A. Worked for the Carlisle.
Q. Yes, but at what?
157 A. Carpenter helper.
Q. Was that in 1916 or 1917?
A. 1917.

Q. In 1917?
A. Yes.
Q. How much of your time had you spent aboard this boat No. 2, at the last witness mentioned, up to the time that plaintiff was art?
A. Well, using that boat once in a while in the spring, you know.
Q. How many days, about, had you been on it?
A. Say about a couple of weeks?
Q. A couple of weeks?
A. Yes.
Q. Steadily?
A. Not steadily, no.
Q. But about so much as fourteen days all told, is that what u mean, that you had been fourteen days on board it?
A. We had been using the boat steady for ten days.
Q. And you had been on her during those ten days?
A. How?
Q. Had you been working on her during those ten days?
A. Yes sir.
Q. How?
A. Yes sir.
Q. And how much, outside of those ten days that you worked ere steadily, had you been on her during that spring?
A. Outside of that I was working on the cannery.
Q. You didn't work on the boat more than the ten days?
A. That is all.
Q. What kind of fuel did you have during that spring on the boat?
A. We was using wood and boxes.
Q. Did you have any coal?
A. No coal at all.
Q. What was the condition of the wood that you used, I mean e fuel for the stove—you understand me right—the fuel for the ove?
A. We were using egg boxes, yes, egg boxes.
Q. Wood from boxes?
A. Yes.
Q. Different kinds?
A. Yes sir.
Q. And what was the condition of the wood in regard to being y or wet during the time you were on it?
A. It was dry—wet—wet.
Q. It was wet?
A. Yes.
Q. Where was it kept?
A. It was kept in the fish hold.
Q. And what chance was there to keep it dry, if it was dry when came aboard, after it went into the fish hold?
A. There was no place to keep it dry. We took it off the dock n the cannery and it was wet before we put it on the boat, and we ok it from the hold to the forecastle.

Q. How could you start a fire with that wood in the condition it was?

A. We could not start no fire without kerosene.

Q. State whether you did that right along?

A. Right along.

159 Q. You used kerosene to light the fire?

A. Yes.

Q. Did you have anything to have kerosene in for that purpose?

A. We had a gallon can.

Q. A gallon can?

A. Just for that purpose.

Q. For any other purpose as well?

A. And for lanterns.

Q. And for filling the lanterns?

A. Yes, filling the lanterns.

Q. Had you yourself been at any time during the ten days that you were on board that boat, working on board the boat—had you been filling that kerosene can—had you any time?

A. I was filling it lots of times.

Q. And where did you get the oil to fill it with, where was that oil kept?

A. It was kept in a special oil house or oil room, you see.

Q. Oil room?

A. Yes.

Q. What kind of oils were there kept there?

A. There was kept gasolene and kerosene.

Q. What were these two oils kept in in that house—in that oil house, what receptacles was it in?

A. Well——

Q. Drums or——

A. There was hundred gallons drums.

Q. Hundred gallon drums in there?

A. Yes.

160 Q. What if anything was there to show, either about the color of the drums or as to being any signs or letters on the different drums, to show what drums there was kerosene in and what there was gasolene in?

A. The drums was like each other, old drums; you couldn't tell the difference, which was which, except you took the head off and smelled on it.

Q. State whether or not there was any different painting on the different drums, whether gasolene or kerosene, whether there was any different paint on them?

A. The same paint.

Q. The same paint. Were there any marks on them in any way indicating either kerosene or gasolene in the drum?

A. I couldn't tell any difference.

Q. Were there any marks?

A. I didn't see any.

Q. Well, if there had been any would you have seen it?

A. Well, of course, I think so.

Q. Was any name painted on them, either "Gasolene" or "Kerosene" painted on them?
A. No, there wasn't. There was some kind of name, but you couldn't figure up what it was; scratched out, you see, you couldn't figure out what it was. And so the time I was over there, I went over to John Peterson and asked him. He was supposed to know it.
Q. The port engineer?
A. Yes, the port engineer; and asked him which was which.
Q. You asked him which was gasolene and which was kerosene?
A. Yes, and he didn't know himself, except he smelled on it, and that was the only way he could find it out.
Q. He came in to help you?
A. He came in to help me.
Q. To get the proper drum to fill your can with?
A. I went to Peterson and he had to show me which drum to take of.
Q. When you were going to take kerosene?
A. When I was going to take kerosene.
Q. Were you on board that boat the day before this accident happened?
A. No.
Q. Were you there the day that the accident happened?
A. Yes sir.
Q. What do you know about there being on that boat, while you were working at it, a particular can that was supposed to contain kerosene? There was such a can, I think you have already stated, there was a gallon can?
A. Yes, was a gallon can.
Q. How was that marked, if anything?
A. There was marked on the side of the can "Kerosene" or "Coal oil." I think it was Coal oil marked on the can.
Q. "Coal oil" marked on it?
A. It was used only for that purpose.
Q. And where was that standing?
A. That was standing in front of the stove, underneath the bench.
Q. On the bench?
A. Underneath the bench, yes.
Q. Underneath the bench?
A. Yes, front of the stove, underneath the bench.
Q. You say underneath the bench?
A. Well, front of the stove, on the side of the bench there the stove was standing on, you see.
Q. The stove was standing on the bench?
A. The stove was standing on the bench, yes.
Q. And this can was standing beneath the bench?
A. Yes.
Q. Did you have the same can all the time there while you were there—the same can?
A. The same can.
Q. Used for that purpose?

A. Used for that purpose.

Q. Now, what can you say about seeing the can there this morning when this accident happened?

A. Yes, I saw the can that morning when I went on the boat.

Q. This same kerosene can?

A. The same kerosene can, yes.

Q. That you had always had there. Did you see who made the fire that morning for lunch, in the stove?

A. Isaac went down and made the fire.

Q. Isaac what?

A. Went down and made the fire.

Q. Isaac?

A. Yes.

Q. O, the witness who was just here?

A. Yes.

Q. You saw him go down and make the fire?

A. Yes.

Q. And about what time should you think that was?

A. Eleven o'clock.

Q. And had you had any meals on board the boat before
163 that Lunch?

A. No.

Q. Were you around the forecastle when he went down to make the fire there?

A. Yes, I just took the stairway, I was where the lever was for the rudder.

Q. And you stood right there?

A. Yes sir, I stood close to the hole.

Q. So you saw him when he made the fire?

A. Yes.

Q. Do you know whether he used any oil this morning, or not, or what he used in starting that fire?

A. I didn't see him use any oil at all.

Q. Did you see him use anything else?

A. He was oiling the engine and he was using waste to oil the engine, that is all I know.

Q. You didn't see whether he used the waste to start the fire with, did you?

A. No, I didn't see that.

Q. You didn't see that?

A. No.

Q. But you didn't see him use any oil?

A. I didn't see him use any oil, no.

Q. Now, where was your luncheon taken, where did you take your luncheon?

A. We ate it on the deck.

Q. About what time was that that you sat down to luncheon?

A. It was a quarter to twelve.

Q. A quarter to twelve?

A. Yes.

Q. The stove that you had in there, what kind of a stove was it, that you had to cook on?
A. It was a plate stove, just thin iron, you see.
Q. Sheet iron?
A. Yes, sheet iron, that is what you call it.
Q. How thick would it be, comparing the thickness with the iron that is in the ordinary stove pipe?
A. Just like the pipe, something like it.
Q. Just like a stove pipe?
A. Just like a stove pipe, exactly.
Q. Had you often made fires yourself in that stove while you were there those ten days before.
A. Yes, lots of times.
Q. How long have you been a fisherman?
A. I have been a fisherman for almost fourteen years.
Q. In these waters here, in Alaska waters here?
A. Six years.
Q. Six years?
A. Yes.
Q. During that time and before this ten days that you were working up here in this boat, had you frequently made fires in stoves of similar kind in similar boats that you had been working in, in the boats, in like stoves?
A. Yes, sure.
Q. You had made fires?
A. Yes.
Q. Did you notice whether or not when you burned wood in them, especially wood from boxes——
A. I know that sure that I use box wood, or any kind of wood, as soon as the fire is out the stove is cold.
Q. The stove is cold as soon as the fire is out?
A. Yes.
Q. Did you ever burn coal in those stoves?
A. No. You can't burn no coal in them stoves at all.
Q. Why not?
A. Because they are so thin they don't stand it.
Q. They don't stand it?
A. No.
Q. At this time, this day that you were on when he was hurt, and the ten days before that you had been on the boat—you were on it the day before, I understand?
A. No.
Q. But for the other time that you had been on this boat, state whether or not there at any time had been any coal on board that boat for use in that stove, or to use for any purpose?
A. No coal at all.
Q. No coal at all?
A. No.
Q. What was the usual and general way in which the fisherman who had to light the fire in these stoves, or light the fire, what was the

general and usual way, both those ten days and before, at other times, when you have been working in similar boats?

A. Using coal oil.

Q. Used the coal oil, pouring it on?

A. Pouring it on, yes, and light a match and put into that, that is all.

Q. Did you state who was the boss of the boat on this day when he was hurt?

166 A. Iver Stensland.

Q. He was in charge?

A. He was in charge.

Q. Did you hear anybody give plaintiff any orders to go down and make a fire in the stove after dinner, sometime after dinner after lunch?

A. They gave him order to go down.

Q. Who gave him the order?

A. Iver Stensland.

Q. Gave plaintiff the order to go down and——

A. Make fire and boil some water to wash the dishes with.

Q. And what time about was that, how long after you had sat down to lunch, about?

A. Two o'clock.

Q. Two o'clock, it was, about two o'clock. From the time that you had been having your lunch and up to that time what were you doing on board the boat?

A. We was running along the shore, hunting.

Q. Hunting?

A. Yes.

Q. When the plaintiff got the order from Stensland to go down did you see whether he went down, when he told him to go down and make the fire?

A. He went down and made the fire.

Q. He went down and made the fire. And did you see anybody else go down there?

A. Not then.

Q. Not then?

A. No.

Q. Well, how soon afterward?

167 A. When the explosion—a little before the explosion Isaac go down.

Q. Isaac Utness went down?

A. Yes, he was going down. As soon as he got down, the explosion happened right there.

Q. The explosion happened right there?

A. Yes.

Q. You didn't see how it happened?

A. I didn't see how it happened, no.

Q. But you knew there was an explosion?

A. I know there was a sudden explosion; it could not be anything else.

Q. What did you see and hear about it?

A. Well, see the flame coming out from the hole; that is all I see.
Q. Did you see the plaintiff?
A. Plenty of it, yes.
Q. No; Ole Sandanger?
A. I didn't see him when the explosion happened, but a second afterwards he came up, right up then.
Q. What condition was he then?
A. He was burning all over; you could not see his clothes for fire.
Q. What did he do after he came up?
A. Well, he was around there hollering for life preservers, and there was none on the boat; nor anything else to be found on the boat, only there was an anchor line laying, that was on the head of the boat. It was heavy—that was laying underneath the anchor, we couldn't do anything with that. He had to jump overboard. He was beside himself.

Q. He jumped overboard?
A. Yes, he was beside himself.

Q. Knowing what kind of fuel you had aboard that boat at the time of the accident, and at what time the dinner was cooked, and the time when plaintiff, Ole Sandanger, went down to start the fire, and knowing the stove that was there, could you state whether or not at that time it could be possible that the stove could be hot?
A. Impossible. The stove could not be hot at all. It was two hours afterwards.
Q. Two hours after the fire——
A. After the fire was on, yes.
Q. Had anyone of you gone down there after you started up to eat your lunch and up to the time he went away, had any one of you four been down?
A. No, I was not down there.
Q. Had any one of the others been down?
A. Isaac——
Q. Well, that was the time that he had gone down to start the fire, but before he went to start the fire had any of you four been down from the time that you sat down to eat lunch?
A. Not after we took our lunch, no.
Q. Well, did you go down there while you were eating your lunch, any one of you?
A. I wasn't.
Q. Well, did any of the others while you were eating lunch?
(No response.)
Q. Can't you answer that?
A. No, there was nobody went then when we were eating the lunch.

Q. Well, that is what we want to know. I will ask you to state whether during all the time you have been a fisherman in these waters for the last six years, it has been the general and usual custom to light the fire on board those fish boats with kerosene, has that been the usual custom?
A. Always. Use kerosene always.

Q. Always?
A. Yes.
Q. How many times have you, during the time you have been fishing in these waters—while on board a boat, how many times have you made fires with kerosene?
A. Must be thousands of times.
Q. And during your experience, have you ever seen an explosion caused by the use of kerosene in lighting a fire?
A. Never.

Cross-examination.

(Mr. Hadley:)

Q. If I understand you, you say that you had been on board this boat steadily for ten days prior to the accident?
A. Ten days before the accident, yes.
Q. Well, had the boat been in commission—
A. How?
Q. Was the boat in commission all that time?
A. No, it was not.
Q. It was not?
A. No.
Q. What were you doing aboard of it?
170 A. The boat was not in condition at all.
Q. Commission, I said.

Mr. Arctander: He didn't ask "condition," commission.

(Mr. Hadley:)

Q. Was it running back and forth?
A. When I was on board her?
Q. When you were on board of it, yes?
A. Well they were using it for towing there.
Q. Using it for towing?
A. Yes.
Q. For ten days, the time that you were on it?
A. Yes.
Q. What did it tow?
A. We were towing piling for the cannery.
Q. This same boat?
A. Same boat.
Q. Why was it you were not on the day before, then?
A. The day before what?
Q. The day before the accident. You said you were not on that day.
A. I was not on that day, no. I was in the cannery.
Q. This gallon can for kerosene was for the purpose of filling lanterns?
A. Lanterns, and for the stove.

Q. And was used for starting fire in the stove, too?
A. Yes.
Q. You say you filled the can yourself lots of times?
A. Yes, after Peterson told me which was which.
Q. After what?
A. After Peterson told me which was which of them two drums.
Q. When did he tell you?
A. He told me—it was the first time I think I went into the oil house.
Q. When was that?
A. It was in the spring, in—it was in February.
Q. Was it before this?
A. Why, certainly, yes.
Q. Now, what did you say was kept in the oil house at that time?
A. There was keeping kerosene and gasolene.
Q. At that time?
A. At that time what?
Q. Were they keeping gasolene there at that time, or later?
A. They keeping gasolene there all the time.
Q. It was there at that time?
A. Yes.
Q. What was it kept in?
A. It was kept in drums.
Q. What size drums?
A. Hundred gallon drums.
Q. What was the kerosene kept in?
A. On the same kind of a drum.
Q. Same size?
A. Same size.
Q. Did you ever hear of a hundred gallon kerosene drum?
A. Well, because, you know, they took the old drums over to Katalla and filled them up for kerosene, used same drums that way.
Q. Was there a fifty gallon drum?
A. There wasn't. There was in the cannery, but not in there.
Q. Not in there?
A. No.
Q. They were all hundred gallon drums?
A. Yes.
Q. What else was kept in the oil house?
A. There was cylinder oil.
Q. Cylinder oil?
A. Yes.
Q. You say that Peterson showed you which drum had the kerosene in?
A. Yes. He couldn't show me except—he didn't know it himself, he had to smell it to tell the difference himself.
Q. Was this inside of the oil house, or was it out on the dock?
A. That was in the oil house. He had that oil house just for that purpose, for oil in there, for keeping oil in, that is all.
Q. What time was this?

A. What?
Q. When?
A. That I asked him——

Mr. Arctander: That Peterson showed you.

(Mr. Hadley:)

Q. What day?
A. Well, that was—I could not say—tell you exactly, but I think it was on the 24th of February.
Q. 24th of February?
A. Yes, about that time.
Q. The names had been on the drums, hadn't they?
A. They have sometime, probably, but not then.

Q. Well, you didn't notice for sure whether they were on
173 or not, did you?

A. Well, I know it for sure. If there was, I didn't have to go over to Paterson and ask him; then I could tell difference, which was which, myself.

Q. How many times were you in that oil house before the day of the accident?
A. I was in quite a few times.
Q. How many times?
A. Well, I must have been in that about a dozen times.
Q. Eleven or a dozen times?
A. Yes.
Q. How did you get in there?
A. I got the key from John Peterson.
Q. From John Peterson?
A. Yes.
Q. Did he go in with you each time?
A. No.
Q. Just the first time?
A. He went in the first time. There was changing drums. When those drums was on, they put in some in the drums, and they were the same thing, and I was in there and I couldn't tell the difference at all. The only way I could tell was to take the top off and smell of them. That is the only time I could tell you.
Q. Isn't it a fact that they didn't put the gasoline in that oil house until the fishing season began?
A. They put oil in that house long before the fishing season started.
Q. The gasoline?

A. Gasolene, yes. They put them oil drums in there
174 when we first came up in the spring, in that oil house—a kerosene drum and a gasolene drum, and they were standing alongside of each other.

Q. Two of them?
A. Two of them, yes.
Q. You were not in the oil house on the day of the accident, were you?

A. How?
Q. You were not in the oil house on the day of the accident?
A. No.
Q. You don't know how they stood that day, do you?
A. O, the day before.
Q. What were you doing the day before in there?
A. Well, the drums was there. I was in the day before. The drums was there.
Q. What were you doing in there the day before?
A. I was working on the cannery and I was in there and got some lubricating oil.
Q. Some lubricating oil?
A. Yes.
Q. The day before?
A. Yes.
Q. Who let you in that day?
A. John. I got the key from John every time I went in there.
Q. From John Peterson?
A. Yes.
Q. Every time you went in you got the key from John Peterson?
A. Yes.
Q. The port engineer?
175 A. Yes.
Q. Every time you went in there did you take off the head of the drum and smell it?
A. That is all, yes. That is the only way I could tell difference. There was no difference on the drums.
Q. Hadn't the front of this drum been painted white?
A. Been painted. The name scratched off. There was changing drums. Sometimes they took the gasolene drum and filled it up with kerosene, and sometimes they filled the kerosene drum full with gasolene, a good many times.
Q. Where did they fill those drums?
A. They filled them at Katalla. Never painted them for the whole summer, and they never attend to it at all. Carelessness.
Q. Why didn't you tell them about it?
A. Well, I wasn't running the business.
Q. How do you know there were no life preservers aboard?
A. Because I know that for sure, was no life preservers. The first thing I looked, and when I first came on the boat, if there was any life preservers, and I says to Mr. Stensland, I says, "Why we couldn't have no life preservers?" And he says "Yes, it isn't necessary to take them along," he says.
Q. Did you look in the upper bunk to see if there were life preservers?
A. I looked all around. Yes, you bet I did. They wouldn't let us have no life preservers on the boat, is the trouble.
Q. What do you mean?
A. I said they wouldn't let us have no life preservers. When I

was running on the boat, we asked a good many times if he
176 don't want to give us any life preservers. He says, "No, it isn't necessary to take them aboard the boat," he says. So they would not let us have no life perservers.

Q. You say you knew there was an explosion because you saw the flame come through the hole and a second afterwards you saw the plaintiff rush up with his clothes burning?

A. Yes.

Q. Was there any sound?

A. Sound, yes I should say it was.

Q. How did it sound?

A. O, sound like you hear when you heard the blowing the hardest around the corner. Just like——

Q. Well, the plaintiff could not have found the life preservers if they had been inside, could he, he had to go up on deck?

A. How?

Q. The plaintiff could not find the life preserver, if it had been inside, could he?

A. No, he couldn't—if there was, but there was none.

Q. What difference would it have made?

A. There was great difference, that it would save him so much, that he would not burn half so much as he did if he had life preservers.

Q. Why?

A. Because they could give him a life preserver and he could jump over right away, but he was looking around there and took a little while looking for some.

Q. Wasn't there a plank pushed out to him?

A. A plank, a big plank there, and he jumped overboard
177 and everything was went in the hurry there and the boat was running full speed and before we throwed the plank in it was about fifty feet away from him, something like that.

Q. But he did get the plank?

A. He did get the plank after a while, yes. He swam to the plank.

(Witness excused.)

178 STATE OF WASHINGTON,
County of King, ss:

I, Earl E. Richards, a Notary Public in and for the State of Washington, residing at Seattle in said county, do hereby certify that:

The annexed and foregoing depositions of the witnesses Isaac Utness and John Jorgenson, on behalf of the plaintiff, were taken before me, and reduced to writing by myself, at Seattle, in said county and state, on the 4th day of February, 1918, in pursuance of the annexed stipulation.

That the above named witnesses, before examination, were by me duly sworn to testify the truth, the whole truth and nothing but the truth.

That the reading and signing of said depositions by the said wit-

nesses was expressly waived by the respective parties hereto, by their counsel.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal this 8th day of February, 1918.

[SEAL.] (Signed) EARL E. RICHARDS,
Notary Public in and for the State of Washington,
Residing at Seattle, in said State.

179 STATE OF WASHINGTON,
County of King, ss:

I, Percy F. Thomas County Clerk of King County and ex-officio Clerk of the Superior Court of the State of Washington in and for King County, do hereby certify that the foregoing two documents entitled in cause No. 127113, Ole Sandanger v. Carlisle Packing Company, in the above entitled court and being marked, respectively, "Depositions of Andrew Lund, Louis Stenson, Ingwald Sandanger and Emanuel Olson, on behalf of plaintiff, taken at Seattle, Washington, before Earl E. Richards, Notary Public, and bearing the file mark of my office dated September 4, 1918; and "Depositions of Isaac Utness and John Jorgenson taken on behalf of plaintiff at Seattle, Washington, on the 4th day of February, 1918, before Earl E. Richards, Notary Public" and bearing file mark of my office dated September 4th, 1918; are the original depositions filed in said cause, that they were filed in my office on the dates marked thereon and stated hereinbefore, and are sent to the Supreme Court of the State of Washington by me pursuant to the praecipe for supplementary record on appeal filed in my office in said cause by the plaintiff, and that a full, true and correct transcript and copy of said praecipe is hereto annexed.

In Witness Whereof I have hereunto set my hand and affixed the seal of said court this 8th day of January, 1920.

PERCY F. THOMAS,
Clerk.

[SEAL.]

By A. N. OLSON,
Deputy.

180 In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, Defendant.

Stipulation to Take Deposition of Nels Hawkinson, Witness on Behalf of Defendant.

It is hereby stipulated and agreed by and between Hadley & Hadley and Kerr & McCord, attorneys for the defendant in the above entitled action, and Arctander & Lysons, attorneys for plaintiff in the above entitled action, that inasmuch as Nels Hawkinson is a necessary and material witness for defendant in the above entitled action, and inasmuch as said witness is about to depart from the city of Seattle, King county, Washington, and will not return to said King county in time for the trial of said action, towit; that said witness is about to depart for the territory of Alaska.

Now therefore, it is hereby stipulated that the testimony and deposition of said witness be taken before Earl E. Richards, a notary public in and for the state of Washington, residing at Seattle, King County, Washington, at the office of Hadley & Hadley, in the Colman Building, in said city of Seattle on the 12th day of
181 March, 1918, at 3:00 o'clock P. M.; and

It is further stipuated and agreed that the testimony of said witness may be taken by said notary in shorthand and afterwards reduced by him into longhand, and that the reading of said deposition to said witness is hereby expressly waived, and that the parties further waive the signature of said witness to his said deposition; and

It is further stipulated and agreed by and between the parties that any and all objections to any questions propounded to said witness for any other reason than that of the form of the question may be interposed at the trial of said action without such objection being noted or entered at the time of taking said deposition, but that all objections to the form of the questions shall be deemed waived unless noted and entered at the time of taking said deposition; and

It is further stipulated and agreed by and between said parties, through their respective attorneys, that said deposition may be read at the trial of said action with the same force and effect as if the said witness were present and testified in open court as in said deposition set forth, unless it shall be made to appear to the court that at the time of the trial of said action the reason for taking said deposition
182 and for submitting the evidence of said witness by said deposition had then ceased; the parties further waive all formalities and formal defects in the taking or returning of this deposition, and especially consent and agree that the fact that said action is not

t at issue shall not in any manner effect the validity of taking said position.

The oath of the notary public is waived.

Dated this 12th day of March, 1918.

(Signed) ARCTANDER & LYSONS,
Attorneys for Plaintiff.
HADLEY & HADLEY,
KERR & McCORD,
Attorneys for Defendant.

3 In the Superior Court of the State of Washington for King County.

No. —.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING CO., Defendant.

Be it remembered, that on the 12th day of March, 1918, at three clock p. m. pursuant to the attached stipulation between counsel r plaintiff and defendant, before the undersigned, a notary public and for the State of Washington, appeared John W. Arctander (of essrs Arctander & Lysons) counsel for plaintiff, and Mr. C. M. adley (of Messrs. Hadley & Hadley) and Mr. E. S. McCord (of essrs Kerr & McCord) counsel for defendant.

Whereupon the following proceedings were had:

4 NELS HAWKINSON, produced as a witness on behalf of defendant, having been first duly sworn by the notary to tell e truth, the whole truth, and nothing but the truth, testified as llows:

(Mr. C. M. Hadley:)

Q. What is your occupation, Mr. Hawkinson?
A. Superintendent of the Carlisle Packing Company.
Q. Superintendent of the plant?
A. Yes.
Q. You are in charge of the entire cannery at Cordova?
A. Yes, acting as manager for that plant, full charge of operation.
Q. Were you superintendent during the season of 1917?
A. Yes.
Q. Were you at Cordova on or about March 7, 1917?
A. Yes.
Q. Were you familiar with the storage of the oil and gasoline ed by the defendant on its boats at that time?
A. Yes, I was.
Q. Will you please state where the gasoline was kept, where the rosene was kept, and what the practice was with regard to same?

A. The coal oil, Pearl oil, or Kerosene, is the same thing, it was kept in this oil house. That is what we had on tap, otherwise, it was on the dock and we rolled in a barrel or drum, as we call it, to use there, put a tap on it, see, and used from it, in this oil house on the dock.

Q. You mean you kept the kerosene in a drum in the oil house on the dock?

185 A. Yes.

Q. As you used it?

A. As we used it, yes, and when that got empty, then we would take that out and put another one in.

Q. What size drum?

A. Most of them are 50-gallon drums; most all the coal oil drums was 50 gallons.

Q. Were there any distinguishing marks on those drums to indicate what they were?

A. Yes, they are all marked and painted, painted white ends and marked, most of them marked "Pearl Oil" and some of them marked "Coal Oil" on the ends.

Q. But they are all painted white?

A. White on the ends, yes.

Q. And that always indicates kerosene?

A. Yes.

Q. Was there such a drum in the oil house at the time stated?

A. Yes, there was.

Q. Were there any other drums in the oil house at that time?

A. No, not at that time.

Q. You know, of your own knowledge, the contents at that time?

A. Yes, I do.

Q. What else was in the oil house?

A. Well, any oil we kept, there is two or three cases of gasoline kept over from the year before, and there was paints there, different paints, and turpentine, putty, okum and pitch and some red paint in a barrel.

Q. By cases of gasoline, what do you mean?

A. Two 5-gallon cans in each case.

186 Q. In a wooden box?

A. A wooden box, yes, covered.

Q. Was there any other gasoline or distillate in the oil house?

A. Not at that time.

Q. Any drums in the oil house containing anything but kerosene?

A. No.

Q. Had there been any gasoline in the oil house that season up to this time?

A. No, not in drums.

Q. Well, do you know who drew the kerosene that was used aboard the boat at the time of the accident on March 7th?

A. No, I don't.

Q. You don't know anything about it, of your own knowledge?

A. No.

Q. You stated that the kerosene drums all had the ends painted white to distinguish them as such?
A. Yes.
Q. Did the men about the cannery have instructions to that effect?
A. Well, instructions don't go to the men, they go to the foreman in charge, you see?
Q. Well, who was the foreman in charge?
A. Ivar Stensland was the foreman.
Q. You know that Stensland was instructed that the drums with the white ends contained kerosene, do you?
A. Yes, and it is very plain, plain for everybody.
Q. You stated, also, that the drums had printed on them either "Kerosene" or "Pearl Oil"?
187 A. Yes.

Cross-examination.

(Mr. Arctander:)

Q. Mr. Hawkinson, at the time of this accident, the 7th of March, how many drums were there in the oil house?
A. Just the one.
Q. If you know?
A. One drum.
Q. Only one drum?
A. One drum, yes.
Q. How many had there been in there for, say, a month before?
A. Well, we only have one at the time, of coal oil.
Q. That is of any kind?
A. Yes.
Q. Drums, I mean in this oil house?
A. Yes, just the one.
Q. During the month before the accident, was there only one drum?
A. Yes.
Q. Were the drums, whatever they contained, standing up in the oil house, or lying down?
A. Lying down.
Q. On what?
A. We have a bench made.
Q. A bench?
A. Yes.
Q. A rack?
188 A. A rack, yes.
Q. A rack or bench. And——
A. We have—if I may tell more about it—we have creosote and tar, too. I forgot to mention that in there. We laid them on the same racks, as we call them.
Q. They are not in drums are they?
A. No, they were in barrels.
Q. These drums are black, they are iron, aren't they?

A. The 50-gallons are in galvanized——
Q. Galvanized?
A. Most of them are galvanized.
Q. The 50-gallon?
A. Yes. Of course there are some black ones too, they come both ways—both ways.
Q. The black ones are made out of iron, are they?
A. Yes.
Q. Those drums?
A. They are all made out of iron.
Q. All made out of iron?
A. Yes, or the 50-gallon and 100-gallon, and then the 50-gallon come both black and galvanized.
Q. And the 100-gallons, how do they come?
A. They come black.
Q. Black iron?
A. Yes.
Q. And they are not quite square, I understand, they are a little longer than they are wide?
A. Yes.
Q. And they are laid down on the long side?
A. Yes.
189 Q. With the ends—what you call the ends, they are on each end of the long end of it——
A. Yes.
Q. —or of the long part of the drum, And as they are laid down in this way on the rack, there is an opening, is there not, or a place that you can get into it, in the upper part, the one that lays up—the part of it that is towards the roof, I mean?
A. There is a bung.
Q. Yes.
A. We have to open up to let air in.
Q. That is a sort of iron plug?
A. Yes.
Q. Which has a screw in it so that you can screw it up?
A. Yes, and you just leave that a little bit loose, just unscrewed partly, so that it will let air in.
Q. But it can be unscrewed entirely?
A. Yes.
Q. And a pump put into it by which you pump out the oil?
A. Yes.
Q. And that was the way you got out the oil from the drums there, was it not—by pumping it out from this place up in the top?
A. Not those drums inside.
Q. Not those drums inside?
A. No.
Q. You had a pump in there, inside?
A. Later in the season we did.
Q. Did you have one at this time?
A. No, not at this time, no.

Q. Are you sure of that?
A. Yes.
Q. Were you the one who gave Stensland directions in regard to painting the ends of these drums white?
A. These are painted in Seattle.
Q. They are painted in Seattle?
A. Yes.
Q. Well, then, you didn't hear anybody give Stensland any instructions about it, did you?
A. There is no instructions about it.
Q. Just answer that question. You didn't hear anybody give him instructions, and you didn't give him any?
A. No, not about painting the drums——
Q. No.
A. —the white. They are all painted in Seattle.
Q. Yes. What did you mean, then, by saying that you knew Stensland was instructed that the ends of the kerosene barrel should be painted white?
A. No, just instructed as to use—as to the use of oil and where the the oil was and so on, that is all.
Q. You meant that he knew——
A. Yes.
Q. —those drums that contained kerosene would be painted white?
A. Yes.
Q. That is what you meant by it, was it?
A. Yes.
Q. You are still in the employ of the defendant?
A. Yes.
Q. You still have the same position——
A. The same position.
Q. —as you had in 1916?
A. Yes.
Q. And you are going up there now, I suppose, now, to Cordova?
A. Yes, now.

(Witness excused.)

STATE OF WASHINGTON,
County of King, ss:

I, Earl E. Richards, a Notary Public in and for the state of Washington, residing at Seattle in said county, do hereby certify that:

The annexed and foregoing deposition of the witness Nels Hawkinson, on behalf of the defendant, was taken before me and reduced to writing by myself at Seattle, in said county and state, on March 12, 1918, in pursuance of the annexed stipulation.

That the above named witness, before examination, was by me duly sworn to testify the truth, the whole truth and nothing but the truth.

That the reading and signing of said deposition by the witness was expressly waived by the respective parties hereto.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal this 20th day of March, 1918.

[SEAL.] (Signed) EARL E. RICHARDS,
Notary Public in and for the State of Washington,
Residing at Seattle, in said State.

193 In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, Defendant.

Stipulation to Take Deposition.

It is hereby stipulated and agreed by and between Arctander & Lysons, attorneys for the plaintiff, and Hadley & Hadley and Kerr & McCord, attorneys for defendant in the above entitled action, that the depositions of Charles Foyston, Conrad Espeland, Jens Foldvick and Hans D. Sorvik, witnesses on behalf of defendant, and also that the depositions of any other witnesses who may be produced by the defendant at the time and place herein mentioned, may be taken on oral examination before Edward F. Medley, a notary public in and for the Territory of Alaska, residing at Cordova, Alaska, or before any other notary public in and for said territory, at Room No. 1, Adams Building, Cordova, Alaska, the taking of said depositions to be commenced at 10.00 o'clock a. m. on the 7th day of August 1918, and continued from day to day until finished; that counsel
194 for the respective parties may be present and examine, and cross examine, said witnesses; that said depositions may be taken in shorthand and transcribed under the direction of the notary public before whom same are taken; and when so finished, shall be certified by such notary and returned to this Court.

All formalities as to signing, certifying and returning said depositions are hereby waived, and said depositions may be read on the trial of this action subject to the same objections, and none other, as to materiality, competency and relevancy, as though the witnesses were present in open court and testifying; provided, however, that if it appears from said depositions that plaintiff has not cross-examined said witnesses at said hearing, he may raise objection at the trial to the form of any question propounded.

Dated this 30 day of July, 1918.

(Signed) ARCTANDER & LYSONS,
Attorneys for Plaintiff.
HADLEY & HADLEY,
KERR & McCORD,
Attorneys for Defendant.

195 In the Superior Court for the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Oath of Referee.

I, A. J. Adams, of Cordova, in the Territory of Alaska, a notary public duly commissioned and sworn under the laws of the Territory of Alaska, having been by stipulation selected to act in the above entitled case, to take the depositions of witnesses on behalf of the defendant, and to certify said depositions and return them when so certified to the Clerk of the above named court, do solemnly swear that I will support and defend the Constitution of the United States of America, and will perform my duties as Commissioner to take said depositions well and truly, to the best of my ability, so help me God.

(Signed) A. J. ADAMS.

Subscribed and sworn to before me this 9th day of August, 1918.

[SEAL.] (Signed) EDWARD F. MEDLEY,
Notary Public for Alaska.

My commission expires October 11, 1921.

196 In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

To the above named Superior Court, and pursuant to a stipulation entered into by the attorneys of the plaintiff and defendant in the above entitled action, made on the 30th day of July, 1918, I, the undersigned Notary Public, respectfully report that having taken the oath required, which oath is hereby annexed, and made a part of this report, I commenced taking the testimony of the witnesses offered in behalf of the defendant at Room No. 1, Adams Building, Cordova, Alaska, at 10 o'clock A. M. the 7th day of August, 1918, and continued taking said testimony from day to day until 4 o'clock P. M. on the 13th day of August, 1918.

During the taking of said testimony Edward F. Medley Esq., appeared for the defendant, and asked the oral interrogatories as appears by the testimony hereto annexed, the plaintiff not appearing either in person or by attorney.

The testimony taken by me is hereto annexed and made a part of this report, and it was reduced to writing by Zella O. Hayes, a disinterested person, in my presence and under my direction.

Dated at Cordova, Alaska, this 13th day of August, 1918.

[SEAL.] (Signed) A. J. ADAMS,
Notary Public.

197 HANS D. SORVICK was sworn to tell the truth, the whole truth and nothing but the truth, and testified as follows:

1 Q. State your name, age and residence?

A. Hans D. Sorvick, age twenty-nine, residence 1514 33 W Seattle, Wash.

2 Q. What is your occupation?

A. Cannery foreman.

3 Q. How long have you been in the business of cannery foreman.

A. Nine years.

4 Q. Give the name of your present employer, and its place of business?

A. Carlisle Packing Company, Cordova, Alaska.

5 Q. How long have you been employed at Cordova?

A. This is the third season.

6 Q. How many months of each year have you been employed in Cordova during the past three years?

A. Eight months of each year.

7 Q. State whether or not you are familiar with the coaloil drums used at the cannery of the Carlisle Packing Co., in Cordova, Alaska?

A. Yes.

8 Q. How are they designated as to contents?

A. The coal oil drums are painted white and marked pearl oil.

9 Q. What is the character of the letters?

A. Black letters on a white end.

10 Q. State whether or not they can be plainly read?

A. Yes, easily, plainly read.

11 Q. Who was kept in the blacksmith's shop at the cannery on or around March 7, 1917?

A. The blacksmith's name was Jorgen Thompson.

12 Q. Who was the blacksmith's helper at that time?

A. It was Emmanuel Olson.

198 13 Q. When did Olson reach the cannery to go to work?

A. About Feb. 12, 1917.

14 Q. When did you reach the cannery?

A. About Feb. 22, 1917.

15 Q. State whether or not as cannery foreman Emmanuel Olson was employed under and worked for you?

A. Yes.

16 Q. How long did Olson work in the blacksmith shop after you reached the cannery last year?
A. Not longer than a week if that long.
17 Q. State whether or not as cannery foreman for nine years you have had opportunity to observe methods of storing oils and gasoline in canneries?
A. Yes, ample opportunity.
18 Q. State whether or not you are familiar with the methods used for storing oils and gasoline in the Carlisle Canning Company during the year 1917?
A. Yes.
19 Q. Give your opinion of that method with regards to the prudence and carefulness thereof?
A. I think it is above that employed at canneries as to carefulness in smaller canneries. It is left more or less to men to help themselves, but at this cannery they keep a man and have a man to take care of it and handle it whose business it is to take care of the disposition of the coal oil and gasoline, and, furthermore the coal oil was kept in the oil house, and to my knowledge no gasoline was kept in the oil house at that time.
20 Q. What time?
A. During February and March last year.
21 Q. Can you state how the oil was taken from the coal oil drum, if so, describe the method?
A. The coal oil in the oil house was taken with a faucet.

(Signed) HANS D. FORVICK.

199 CHAS. FOYSTON was sworn to tell the truth, the whole truth, and nothing but the truth and testified as follows:

1 Q. State your name, age and resident?
A. Chas. Foyston, age thirty-four, residence, Cordova, Alaska.
2 Q. What is your occupation?
A. Clerk.
3 Q. By whom are you employed?
A. Copper River and Northwestern Ry.
4 Q. By whom employed during the year 1917—the first six or seven months?
A. The first six or seven months by the Carlisle Packing Co.
5 Q. Where were you working then?
A. I was working in the store.
6 Q. Where?
A. At the Carlisle Packing Co. plant, Cordova.
7 Q. State whether or not you remember about the time Mr. Sandanger had his accident, and when it was?
A. About March 7, 1917.
8 Q. At that time how many men were employed approximately in and around the cannery?
A. About 100.
9 Q. Were they around there most of the time?

A. Probably, they were divided between the cannery and the shipyards, around the bay.

10 Q. Did you know Sandanger?

A. Yes sir.

11 Q. State whether or not your duties had anything to do with the custody of gasoline and various other oils?

A. I was supposed when boats came in to deliver the oil and gasoline, and I was the only person.

12 Q. What time was that, around March 7 at the time of the accident?

200 A. Yes, and I was the only one outside of Mr. Hawkinson who had access to the oil house.

13 Q. State the procedure when anybody came in and wanted oil or gasoline?

A. They came to the store, and I would take the key and take them up to the oil house, and give them their oil.

14 Q. State whether or not there was anybody else employed at the cannery who went to the oil house more often than you?

A. No, I was practically the only one who went to the oil house to any extent.

15 Q. Describe the condition inside of the oil house with relation to the door, the position of the drums of oil and gasoline and the light in the oil house?

A. Entering from the door at the side of the building, the oil was arrayed on a rack at the back side of the building with the ends facing the door. On the right was an extra heavy lubricating oil barrel, next was a medium heavy oil barrel. The next was a 50 gallon coal oil drum with a faucet, the next was a barrel of pine tar, and beside that was a barrel of cre-sote, and the last barrel on the left was coal tar. There was a window at the left end of the building.

16 Q. State whether or not there was any gasoline stored in the oil house, and if not, where it was kept?

A. Previous to the Sandanger accident there had been no gasoline kept in the oil house.

17 Q. Where had the gasoline been kept?

A. Just outside the platform between the oil house and the China house.

18 Q. State about when, with reference to the Sandanger accident, gasoline was kept in the oil house?

A. Not before I left to go to the Canyon which was about three weeks later.

201 19 Q. State what marks if any were on these drums in the oil house?

A. The coal oil drum was marked at the end in black letters about four inches high and marked plainly. The other barrels were marked in the same way.

20 Q. In what manner were these marks put on the end of the drums?

A. Stencilled.

21 Q. What color was the end of the drums painted?

A. The coal oil drum was painted white, and the others were red. They all had black lettering, stencilled letters.

22 Q. How high was the lettering?

A. The lettering on the coal oil drum was about four inches high—the lettering on the other drums was about three inches high.

23 Q. Give the size of the drums?

A. 50 gallons.

24 Q. All of them?

A. The coal oil was a 50 gal. drum, and the others were of about 50 gal. capacity.

25 Q. Describe the manner used to remove oil or kerosene from the drums or barrels?

A. Oil was removed from the coal oil drums by a faucet, and also the lubricating oil was removed by means of a faucet.

26 Q. How about the others?

A. One stood open with the head bursted in.

27 Q. State whether or not a pump was used on any of these barrels to remove the contents?

A. No.

28 Q. State whether or not any other manner of working the key to the oil house was entered into while you had charge of the store room, and what that manner was if any?

A. Not while I remained there.

202 29 Q. Can you state approximately the date you left there? there?

A. March 25, 1917.

30 Q. State whether or not you are familiar with both gasoline and coal oil, or kerosene so called?

A. Quite familiar.

31 Q. How would you tell them apart in the dark?

A. Both by smell and feeling.

32 Q. Explain that?

A. Gasoline feels cold and dry. Coal oil is warm and greasy, and there is a difference in the smell.

33 Q. State whether or not in your opinion the oil and the gasoline of the Carlisle Packing Company were carefully stored?

A. I consider they were very carefully stored.

34 Q. State whether or not kerosene or coal oil poured into a stove with hot coals or embers would explode?

A. Yes, it will.

(Signed) CHAS. FOYSTON,
Witness.

203 NICK LORENSON was sworn to tell the truth, the whole truth, and nothing but the truth and testified as follows:

1 Q. State your name, age and residence?

A. Name Nick Lorenson, age thirty-five, occupation foreman and residence Tacoma, Wash.

2 Q. How many months in each year do you fish for a living?

A. Five or six months out of a year.

3 Q. How many years have you been a fisherman?
A. In this country about six years.
4 Q. Before that?
A. Before that for ten or twelve years.
5 Q. What sort of fishing do you do?
A. In this country most of it is salmon fishing.
6 Q. What sort of fishing, was it where you attended nets or seine?
A. All kinds of fishing.
7 Q. State whether or not you are familiar with the method used by fishermen in carrying coal oil on the boats?
A. Yes.
8 Q. For what purpose is coal oil put on the boats?
A. For lighting.
9 Q. As an experienced fisherman, state whether or not you used coal oil to start fires in the stoves.
A. I did not. On the boats I used I was always the first one to get up in the morning and start the fires, and I have never used coal oil.
10 Q. State whether or not you consider it a reasonable, careful thing to do for a fisherman to start his fire with coal oil?
A. It is carelessness.
11 Q. Do you think they ought to start fires with coal oil?
204 A. I don't start fires with coal oil. My experience has been not to use coal oil in the stoves.
(Signed) NICK LORENSON.

205 JENS FOLDVIK was sworn to tell the truth, the whole truth, and nothing but the truth and testified as follows:

1 Q. State your name, age and residence?
A. Name, Jens Foldvik, age thirty-four, residence Poulsbo, Wash.
2 Q. Where do you work?
A. I work for the Carlisle Packing Co.
3 Q. Fisherman?
A. Yes, fisherman.
4 Q. What work did you do in the year 1917?
A. I was working in the boat shop for the Carlisle Packing Company?
5 Q. Where was this?
A. It was down on at the Carlisle Packing Co. plant in Cordova.
6 Q. When did you reach there last year?
A. I think it was the 8th of February we left Seattle, and reached here Feb. 12, 1917.
7 Q. State whether or not your work brought you around the oil house at the Carlisle Packing Co.
A. I was one of the helpers on the boats—we were fixing up the cabins and we used a lantern for a light. We had no other light.
8 Q. State whether or not you have been in the oil house of the Carlisle Packing Co.
A. I have been in the oil house.

9 Q. Can you state of your own knowledge whether these oil drums were marked and how they were marked?
A. Yes I can. The oil drums are painted white at the ends with black lettering.
10 Q. What does it say?
A. Pearl oil.
11 Q. How did they draw oil from this coal oil drum?
A. From a faucet.
206 11 Q. Have you worked around the oil house, and if so state what your work consisted of?
A. I never worked around the oil house.
12 Q. You worked there once then?
A. Just by helping them roll the coal oil up on the platform.

(Signed) JENS FOLDVIK.

207 Dr. W. W. COUNCIL was sworn to tell the truth, the whole truth, and nothing but the truth and testified as follows:

1 Q. State your name, age, residence and occupation?
A. Name Walter Wooten Council, age thirty-six, residence Cordova, Alaska, and occupation Physician and Surgeon.
2 Q. Do you know the plaintiff in the case, Ollie Sandanger?
A. I do.
3 Q. State whether or not he has been under your care and attention for injuries, and what those injuries were?
A. Yes, he was burned.
4 Q. State whether or not he was confined in your hospital in Cordova?
A. He was.
5 Q. On what date did you first treat him?
A. March 7, 1917. He came into the hospital at 3.15 P. M.
6 Q. State how long before that his accident occurred?
A. From his story about an hour and a half maybe two hours.

(Signed) W. W. COUNCIL, M. D.,
Witness.

208 Filed in Supreme Court of Washington Jun. 13, 1919. C. S. Reinhart, Clerk. F. S. G.

15407.

OLE SANDANGER

v.

CARLISLE PACKING CO., a Corporation.

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209 In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Stipulation to Take Depositions.

It is hereby stipulated and agreed by and between Hadley & Hadley and Kerr & McCord, attorneys for the defendant in the above entitled action, and Arctander & Lysons, attorneys for plaintiff in the above entitled action, that inasmuch as John Peterson and Ivar N. Stensland are necessary and material witnesses for defendant in the above entitled action, and inasmuch as both of said witnesses are about to depart from the city of Seattle, King County, and will not return to said King county in time for the trial of said action, to wit; that said witnesses are about to depart for the territory of Alaska.

Now therefore, it is hereby stipulated that the testimony and depositions of both of said witnesses be taken before Earl E. Richards, a notary public in and for the state of Washington, residing at Seattle, King county, Washington, at the office of Hadley &

Hadley, in the Colman Building, in said city of Seattle on this 14th day of February, 1918, at 2:00 o'clock P. M., or as soon thereafter as possible, and

It is further stipulated and agreed that the testimony of said witnesses may be taken by the notary in shorthand and afterwards reduced by him into longhand, and that the reading of said depositions to said witnesses, and each of them, is hereby expressly waived, and that the parties further waive the signature of each of said witnesses to their said depositions; and

It is further stipulated and agreed by and between the parties that any and all objections to any questions propounded to said witnesses for any other reason than that of the form of the question may be interposed at the trial of said action without such objection being noted or entered at the time of the taking of said depositions, but that all objections to the form of the questions shall be deemed waived unless noted and entered at the time of the taking of said depositions; and

It is further stipulated and agreed by and between said parties, through their respective attorneys, that said depositions may be read at the trial of said action with the same force and effect as if the said witnesses were present and testified in open court as in said depositions set forth, unless it shall be made to appear to the court that at the time of the trial of said action the reason for taking said depositions and for submitting the evidence of said witnesses by said depositions had then ceased; the parties further waive all formalities and formal defects in the taking or returning of these depositions, and especially consent and agree that the fact that said action is not yet at issue shall not in any manner effect the validity of taking said depositions.

The oath of the notary public is waived.

Dated this 14th day of February, 1918.

(S-gned) ARCTANDER & LYONS,
Attorneys for Plaintiff.
HADLEY & HADLEY.
KERR & McCORD,
Attorneys for Defendant.

In the Superior Court of the State of Washington for King County.

No. —.

OLE SANDANGER, Plaintiff.

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Be it remembered, that on the 14th day of February, 1918, at two o'clock P. M. pursuant to the attached stipulation between counsel for plaintiff and defendant, before the undersigned, a notary public

in and for the state of Washington, appeared John W. Arctander (of Messrs. Arctander & Lysons) counsel for plaintiff, and Messrs Hadley & Hadley and Mr. E. S. McCord (of Messrs. Kerr & McCord) counsel for defendant.

Whereupon the following proceedings were had:

213 JOHN PETERSON, produced as a witness on behalf of defendant, having been first duly sworn by the notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

(Mr. McCord:)

Q. State your name and residence?
A. John Peterson.
Q. Where do you live, Mr. Peterson?
A. In Seattle, at the present time.
Q. Where were you working during the year 1917?
A. Carlisle Packing Company, Cordova.
Q. Alaska?
A. Alaska.
Q. How long have you worked for that company?
A. Seven years.
Q. Is it your custom to come down in the fall of the year and go back in the spring?
A. Yes. No, not——
Q. What?
A. This spring.
Q. When did you come down from Alaska?
A. I came down the 26th of October.
Q. And when did you go up there?
A. The 5th of April.
Q. 5th of what?
A. 5th of April.
Q. 1916. You did not come down in the fall of 1916?
A. No, I stayed up there.
Q. You stayed there during the winter?
A. Yes.

214 Q. What were your duties along about March, 1917, in the employ of the Carlisle Packing Co.?
A. Port Engineer.
Q. What were those duties?
A. Look after gas engines, boats, repair work.
Q. What?
A. Repair work, machinery.
Q. Did you have anything to do with seeing that the boats were properly equipped?
A. No, not except the machinery.
Q. You had nothing to do with seeing as to the supply of food and oil and things of that sort, or did you?
A. No.

Q. Were your duties on the dock, too?
A. At the dock and in the machine shop.
Q. Do you know where the oil room was located at the Carlisle Packing Company, in March, 1917?
A. Yes.
Q. Where was it?
A. On the dock.
Q. Was it in a building by itself, or connected with some other building?
A. No, by itself.
Q. What size building was it?
A. 15x25 just about.
Q. On the 5th day of March, 1917, state what was stored in this oil room, what sort of oil?
A. It was coal oil.
Q. What else?
A. Paint.

(Mr. Aretander:

Q. What?
A. Paint.

(Mr. McCord:)

Q. What else?
A. And putty and o-kum—no, that is wrong—did I mention coal oil?
Q. Yes.
A. Coal oil and——
Q. Was there any gasolene?
A. Gasolene?
Q. In what was the gasolene stored?
A. In cases.
Q. What do you mean by cases?
A. Five gallon cases, two cans in a case.
Q. Tin cans?
A. Tin cans.

Mr. Hadley: Five gallon cans?
A. Yes.

(Mr. McCord:)

Q. Were they crated?
A. Crated, yes.
Q. Was there any gasoline in this oil room, in drums?
A. No, not at the time.
Q. What was the coal oil or kerosene stored in, what sort of tanks?
A. Fifty gallon drums.
Q. How were they painted?
A. White on the ends, both ends.

Q. What?
A. Painted white.
Q. White?
A. On both ends.
Q. On the butt ends.
216 A. Both ends.
Q. How about the sides, was all of it painted——
A. Black.
Q. Black. White ends.
A. White, both ends, and black in the center.
Q. How did you get the oil out of these drums, how was it taken out?
A. By a faucet—oil faucet.
Q. Did you have any gasoline or did the company have any gasolene stored in drums in this building?
A. No, not at the time.
Q. Did you have any stored anywhere in drums at that time, about the 5th of March?
A. No.
Q. How?
A. At the dock.
Q. Yes. Where were the gasolene drums kept?
A. On the dock outside of the oil house, between the oil house and the China house, the Oriental house they call it.
Q. Were the gasolene tanks or drums painted with any color?
A. Painted red, both ends.
Q. How were the sides?
A. No paint.
Q. Referring again to kerosene drums, you say they were fifty gallon drums?
A. Fifty gallon drums.
Q. Was there any name marked on them, were the words "Coal oil" or "Kerosene" marked on them?
A. They were marked "Coal oil."
217 Q. "Coal oil." And on the gasolene tanks, were they marked in any way?
A. Marked "Gasolene" on the end and on the side.
Q. Was the condition that you have just stated as to the contents of the oil room the same on the 5th, 6th and 7th of March?
A. Yes.
Q. How long did it continue that way? What was your custom as to the contents—what was the custom of the company in regard to the keeping of the coal oil in the manner you have stated in this oil room, did that condition prevail at all times, I mean?
A. Yes.
Q. Had you had any occasion to withdraw any coal oil from this drum with the faucet in it, situated in the oil room, about the 7th of March, 6th of March, somewhere along there?
A. Yes.
Q. What was that occasion? State the facts about it. When did you do it? When did you take any oil from this drum?

A. I took it about the first of the month, first of March.
Q. For what purpose?
A. For lamps for my house.
Q. How many drums of coal oil were there about the 5th, 6th or 7th of March, in this oil house?
A. One.
Q. Just one. How long did that remain there before it was refilled?
A. O, about three weeks. We don't refill it.
Q. What is it?
A. We don't refill it.
Q. What do you do, what do you do when it runs out?
A. Take a new one.
Q. Was there plenty of oil in it on the 5th, 6th or 7th of March, plenty of coal oil in this drum on the 5th, 6th, and 7th of March, 1917?
A. Yes.
Q. How long did a fifty gallon drum of kerosene last you at that season of the year?
A. About three weeks.
Q. Where were those drums filled with kerosene, I mean the kerosene drums?
A. In Seattle.
Q. When were they brought up there—what did you do with them when they got up there, those that you did not put in the oil house?
A. Stored them away in the dock.
Q. In the dock. And then you would put a new one in—when the one was used up, you would replace it with another drum?
A. Yes.
Q. And marked the same way, was it?
A. All the same way.
Q. Now, as to your gasolene, where did you get your gasolene that you used at about this time and at all times during the year 1917?
A. At the time, in cases, in cans, five gallon cans.
Q. Where did you get your gasoline?
A. Seattle.
Q. Did you get any from Cordova during the year?
A. Yes.
Q. How would you get that, how would that be brought over?
A. In drums.
Q. What size drums?
A. 110-gallon drums.
Q. Where did you get this gasoline?
A. In Katalla, Alaska.
Q. How far is that from Cordova?
A. O, about one hundred and thirty miles.
Q. Did you get any drums from any other source than Katalla?
A. No.
Q. (Continuing:) —of gasolene?

A. No.

Q. Did you get any coal oil at Katalla?

A. No.

Q. How could you determine whether a drum contained gasoline or coal oil, how could you find out whether a drum contained coal oil or gasolene? I say, how would you discover?

A. They were marked.

Q. They were marked. Was there any way to take the covers off of these drums?

A. Yes.

Q. Were they loose or fastened tight?

A. They were fastened tight.

Q. How were they on the 5th, 6th and 7th of March, 1917? about that time, were they fastened or loose?

A. Fastened.

Q. And you got it out through the faucet?

220 A. Through the faucet.

Q. You could easily distinguish gasolene from coal oil from the smell, if it was taken out of the faucet, couldn't you?

A. Yes.

Q. What is the difference, do you know, or are you able to explain it, I mean?

A. Yes.

Q. How, what is the difference?

A. Put some in your hand, gasoline will dry up right off.

Q. I say, could you tell from the smell?

A. Yes.

Q. There is a difference in the smell, is there?

A. A whole lot of difference.

Q. Could you tell the difference in the dark, from the smell alone?

A. Yes.

Q. Anyone could, could they, anyone could tell the difference by the smell?

A. Yes.

Q. Who kept the key to this oil house?

A. The blacksmith, in the blacksmith shop.

Q. Did you ever go into the oil room to get or take the tops off to see which was gasolene and which was kerosene, with Mr. Jorgenson?

A. No.

Q. Did you ever see Mr. Jorgenson in the oil room at all, that you know of?

A. Yes.

Q. Did you ever see him taking oil out of the kerosene drum?

221 A. No.

Q. Did you ever see him taking the tops off, to determine whether there was gasolene or kerosene in it?

A. No.

Q. Was there ever at any time in this oil room a koresene drum that was not marked with the ends painted white and the name on it?

A. No.
Q. And the name "kerosene" on it, I mean. And you never saw ny, there were never any drums there unmarked, were there?
A. No.
Q. In the oil that you say you took out of the kerosene drum for amily use, did you have any trouble with it?
A. No.
Q. What was it?
A. Coal oil.
Q. Do you know the witness, Mr. Isaac Utness, who testified for he plaintiff the other day—do you know him?
A. Yes.
Q. Did you know him about the 7th of March, 1917?
A. Yes.
Q. How long had you known him?
A. Four years.
Q. After the accident and on the day of the accident, on the 7th f March, 1917, did you have any conversation with Mr. Utness in gard to the accident to this plaintiff?
A. Yes.
Q. Where did that occur?
A. In the evening.
Q. I say where?
A. At the cannery.
Q. On the dock?
A. On the dock.
Q. About what time in the day?
A. Five o'clock in the evening.
Q. Was anyone present besides you and him——
A. No.
Q. —that you remember of?
A. No. Not that I remember.
Q. Did Mr. Utness at that time state to you how the accident ccurred?
A. Yes.
Q. What did he tell you?
A. He said that after lunch, that Ole Sandanger was told by ensland——

(Counsel for plaintiff objected to this for the reason that no proper undation has been laid for impeaching testimony.)

Mr. McCord: At this time I would like for the record to show hat we request the counsel for the plaintiff to return Mr. Utness to he stand for further cross examination, so that we may lay the undation for the impeaching question. I would like the record to how that this case was only commenced a few weeks ago, and testiony has been taken for the accommodation of counsel and to exedite the litigation, hurriedly and without an opportunity to find ut what the facts were in regard to these impeaching questions, and hat we ask counsel now to bring his witness on the stand again so

that we may further cross examine him, we not being fully
223 advised at the time as to just the extent of his contradictory
statements, that is, statements made by the witness Utness inconsistent with and contradictory to the statements made by him upon the stand, touching the circumstances surrounding the accident, and the cause of it. I would like to ask counsel, now, if he will produce the witness Utness for further cross-examination?

Mr. Aretander: I will state, for the record, that Mr. Utness is beyond our reach and counsel's reach, I guess. He went away last week from the city, having gone into the government service, having enlisted, and on his way to the front, as I understand it. I know he has left the city.

Mr. McCord: Is it not a fact that he is at Vancouver, Washington, in the service of the government, in the production of spruce lumber? I am so advised.

Mr. Aretander: I do not know. I do not know anything about it. The last I know was when he said "Good-by" when we were here, and I was asking the plaintiff and he told me that he had gone away, I don't know where. I thought it was fair to make that point here that there was no foundation laid.

Mr. McCord: I want to know whether you will insist upon that objection at the trial, that the proper foundation was not laid. We could not know this.

Mr. Aretander: I won't say that now, counsel, but I am inclined to think that perhaps, I won't, because I have no disposition to be mean about it.

Mr. McCord: Well, it might mean a good deal. I don't know that the testimony that will be elicited, Judge, will be
224 so important, but I feel that you ought to tell us now whether you will or whether you won't, and not wait until the trial. Don't you think that would be fair?

Mr. Aretander: That is why I made my objection here now, so as to raise the point, but, when we hear what it is, I will tell you then.

Mr. McCord: All right.

(Mr. McCord:)

Q. Just then state, Mr. Peterson, what Mr. Utness said to you on the dock at five o'clock in the afternoon or evening of March 7, 1917, concerning the accident.

A. Utness said to me that after they had their lunch today, that Ole Sandanger was told by Ivar Stensland to go and wash the dishes, he went into the forecastle to heat the water, and Isaac Utness went down in the forecastle to oil the engine, and when he came down in the forecastle Ole Sandanger was holding the oil can in both hands and looking at the engine, and then the flare of flame flared up from the stove.

Q. He was holding the can in both hands you say, and what was he doing with the oil?

A. Pouring it into the stove.

Q. Did he say anything as to what was the matter with the engine, ly he was looking at it?
A. The engine was "missing" at the time.
Q. You have been on this vessel, have you?
A. Yes.
Q. Did Mr. Utness tell you where the plaintiff was standing at the time he was pouring the oil into the stove?
A. Yes.
Q. Where?
A. In front of the stove.
Q. Well, from his position in front of the stove, could he see engine without looking away from the stove?
A. No.
Q. Did you have any further conversation with Mr. Utness in gard to this matter, in the last few days?
A. Yes.
Q. Where was that?
A. On Pike street.
Q. When?
A. About two weeks ago.
Q. Did he state to you or did you call his attention to his con- sation with you in regard to the circumstances surrounding the ident?
A. Yes.
Q. Did you ask him if he remembered what he had told you out it?
A. Yes.
Q. Did you tell him what he had told you?
A. Yes.
Q. Did he deny it, or did he deny that he had told you that?
A. He didn't say anything.
Q. He didn't dispute it at all?
A. No.
Q. Did he say he remembered telling you about it the way you did it?
A. No.
Q. You didn't ask him about it?
A. No.
Q. You just told him about it and he didn't say whether had told you so or not?
A. No, didn't say a word.

Cross-examination.

(Mr. Arctander:)

Q. You are still working for the defendant, you are still working r the company?
A. Yes.
Q. —the Carlisle Packing Company. And expect to continue to ork for them this summer?

A. Yes.
Q. Expect to go up there now?
A. Yes.
Q. In the near future. You hold the position there with them, and did last year, of what is called port engineer, didn't you?
A. Last year.
Q. That is what your position is called—last year?
A. Yes.
Q. Last spring?
A. Last spring.
Q. In February and March?
A. Yes.
Q. You expect to go up to the same position, do you not?
A. No.
Q. What position are you going to hold with them now?
A. That is outside foreman.
Q. What?
227 A. Outside foreman.
Q. You have been promoted, it is a higher position, is it?
A. I don't know if it is higher or lower.
Q. Get more money for it?
A. That might be.

Mr. Arctander: That is all.

Mr. McCord: What about the testimony, Judge; you will waive it I suppose, will you?

Mr. Arctander: I will tell you, I would rather see if we can't make some arrangement, if we can get hold of him where he is and have the question asked him.

Mr. McCord: If you will get him back here, I won't ask you to waive it.

Mr. Arctander: I won't agree to get him back here.

Mr. McCord: If you will get him back here, I have no objection to it at all, but I don't want to be compelled to apply to the court for an order to bring him back, or else ask to exclude his whole testimony, and I don't think it is of sufficient importance for that.

Mr. Arctander: I suggest this—of course, the only thing I can do about it, except waiving any objection, would be that I would like to write to him and find out—giving him this evidence and find out whether or not he made any such statements and to have his affidavit taken, one way or the other, on it.

Mr. McCord: I have no objection to your doing that. I don't care whether he comes back or not.

Mr. Arctander: No, but if——

Mr. McCord: I don't think we would object if he made an affidavit.

228 Mr. Arctander: If I could get it out in the form of an affidavit there is not the big expense of taking a deposition. We would not need to go down there. But this case won't come up

for a month or two, anyhow, and I will write at once and find out where he is.

Mr. McCord: All right then, we will not take any steps until we hear from you.

Mr. Aretander: No. All right, then I can let you know then.

Mr. McCord: You just let Mr. Hadley know.

Mr. Aretander: Yes.

Mr. McCord: Well, that is all we have today.

The hearing was here continued subject to the call of the notary.

229 Seattle, Wash.,

Feb. 26, 1918—10 o'clock a. m.

Continuation of proceedings pursuant to adjournment.

Present: Same as at former hearing.

IVAR N. STENSLAND, produced as a witness on behalf of defendant, having been first duly sworn by the notary to tell the truth, the whole truth, and nothing but the truth, testified as follows:

(Mr. McCord:)

Q. What is your name?

A. Ivar N. Stensland.

Q. What nationality are you?

A. Well, sir, I am an American, Norwegian descent.

Q. Native born American?

A. Native born American, yes sir.

Q. Where do you reside permanently?

A. Well, sir, I am residing in Alaska; about nine or ten months out of the year I am in Alaska.

Q. Where is your home down here?

A. My folks and what I call my home has been Portland—Gresham, Oregon.

Q. In the employ of what company are you now?

A. Carlisle Packing Company.

Q. How long have you been employed by the Carlisle Packing Company?

A. Since January 10, 1916.

Q. Were you employed by that company along about March 7, 1916——

230 A. Yes sir.

Q. —1917?

A. 1917.

Q. And how long prior to that time?

A. February.

Q. And how long afterwards?

A. Until November.

Q. And you were engaged in working for them where at that time?

A. At Cordova.

Q. Alaska?

A. Yes sir, Cordova, Alaska.

Q. In what capacity were you engaged by that company at that time?

A. As outside foreman.

Q. What were the duties of outside forman?

A. Well, I was to have charge of the general construction work of all kinds outside of the plant and around the plant.

Q. Well, did you have anything to do with fish traps?

A. Yes sir, fish traps and fish boats and of the equipment.

Q. And the operation of boats?

A. Yes sir.

Q. Are you acquainted with the plaintiff in this action?

A. Yes sir.

Q. What is his name?

A. Ole Sandanger.

Q. And by whom was he employed on or about the 7th of March?

A. By the Carlisle Packing Company.

231 Q. On the morning of the 7th of March, 1917, I will ask you to state what you did, in the presence of Mr. Sandanger, the plaintiff, just state what you did that day?

A. In the morning of the 7th of March we got orders from the Carlisle Packing Company to go out and look for some sand for building purposes, concrete work, and I was detailed in charge of the party to go after the sand, and I got with me Ole Sandanger and John Jorgenson and Isaac Utness, and we got ready to leave Cordova at eight o'clock.

Q. When did you leave Cordova?

A. At eight o'clock; that is, the cannery.

Q. In the morning?

A. In the morning.

Q. Yes. Well, what sort of a boat was it?

A. That was a 28-foot fishing boat.

Q. What was the name of it?

A. No. 2, Carlisle C. P. C.

Q. Well, I will ask you to state what you did with the boat and its crew?

A. We went down to Boswell Bay. It is on Hinchinbrook Island, and there we got a load of sand and—well, we entered the mouth of Boswell Bay at eleven o'clock.

Q. I will call your attention to defendant's exhibit number "I," being a chart showing the waters of Prince William Sound. I will ask you if you are able to point out upon this chart, defendant's exhibit "I," the course that you took from Cordova, starting at eight o'clock in the morning, March 7th, until you returned to Cordova?

A. Yes sir.

Q. Just step up and examine the map and state where you started from.

232 A. Started here from the Carlisle cannery.

Q. How far is that from Cordova?

A. That is about seven-eighths of a mile from Cordova.

Q. North of Cordova?
A. Yes, it is northerly.
Q. How is that indicated on the map, by what, cannery there?
A. There is a dock there.
Q. You may indicate that with the letter "C."
A. All right. (Witness places letter "C" in lead pencil, at point indicated.)
Q. Starting from there south—the dock of the Carlisle Canning Company, at Cordova, state——
A. (Interrupting:) At eight o'clock in the morning.
Q. (Continuing:) —state where you went: starting at "C," you came down to what point?
A. Then we went in a southerly direction.
Q. To what point, southerly direction to what?
A. To this point here at Spike Island.
Q. Mark that with a pencil "D."
A. D—capital D. (Witness places letter "D" in lead pencil, at point indicated.)

(Mr. Aretander:)

Q. What did you say "D" was?
A. Spike Island.

(Mr. McCord:)

Q. Then, leaving point "D" at Spike Island, where did you go?
A. In a southerly direction, past Cape Whitshed. That is "E." (Witness places letter "E," in lead pencil, at point indicated.) And further south to mouth of Boswell Bay.
333 Q. Indicated by the letter "F"?
A. "F." (Witness places letter "F" in lead pencil at point indicated.)

Mr. Aretander: That other one was "E" was it?
Mr. McCord: "E;" yes.
Mr. C. M. Hadley: Cape Whitshed.

(Mr. McCord:)

Q. Now, is that course indicated by the red line on the map, defendant's exhibit "I"?
A. Yes sir, that is indicated by this red line.
Q. And by the letters that you have placed on there?
A. By the letters, yes sir.
Q. Then, when you arrived at the entrance to Boswell Bay, at the letter "F," then where did you go?
A. Then I went into the Bay.
Q. On which side?
A. In around on the——
Q. On the southerly side?
A. The southerly side, yes.

Q. As shown by the red line?
A. Yes sir, as shown by the red line here.
Q. To what point?
A. Well, to a point up in the head of the Bay.
Q. Called "G" is it—indicated by the letter "G"?
A. Yes, a "G." (Witness places letter "G" in lead pencil, at point indicated.) We were looking for timber there, and trap piling.
Q. Then when you got to the letter "G," what course did you take?
A. Then I came right back, almost the same course, the opposite course.

234 Q. To what point?
A. Back to the mouth of Boswell Bay again.

Q. And indicated by the letter "F" is it?
A. Yes sir.
Q. Then what did you do at that point?
A. There is where we took on our load of sand.
Q. How much sand?
A. About two ton.
Q. Then, starting from the mouth of Boswell Bay, at the letter "F," did you follow the red line?
A. Yes.
Q. In what course?
A. That is in an almost due north course.
Q. To a point——
A. "H." (Witness places letter "H," in lead pencil, at point indicated.)
Q. "H."
A. Thence easterly.
Q. Northeasterly?
A. Northeasterly.
Q. To what point?
A. To mouth of Canoe Pass.
Q. How is that indicated—"I"?
A. Yes. (Witness places letter "I" in lead pencil, at point indicated.)
Q. By the letter "I." Then from there you went in what direction?
A. Then we went——
Q. From the mouth of Canoe Pass, the letter "I"?

A. We went easterly, more to the east.

235 Q. A little northeast, isn't it?
A. Yes.

Q. To what point?
A. To a point in the channel out here.
Q. West of Cordova?
A. West of Cordova.
Q. Marked how?
A. That is marked "J." (Witness places letter "J" in lead pencil, at point indicated.)
Q. And after leaving the point "J," as shown on the map?
A. Thence about due east.

Q. Due east to Cordova, was it?
A. To Cordova, yes.
Q. How is your course indicated, as shown on the map?
A. It is shown on the map here with a red line.
Q. Now, you say you left the cannery, or point "C," at eight o'clock in the morning, was it?
A. Yes sir.
Q. What speed did your vessel have?
A. About six miles an hour.
Q. Is that the limit of her capacity?
A. Yes, that is just about her limit.
Q. Then at what speed did you run from the cannery over to the point "F" at Boswell Bay?
A. Full speed.
Q. That would bring you to Boswell Bay at what time?
A. Eleven o'clock.
Q. Well, as you remember it, what time was it when you got there?
A. It was elev-n o'clock when I got there.
236 Q. Did your boat keep a log?
A. No sir.
Q. Well, from Boswell Bay—the entrance to Boswell Bay, why didn't you take your sand there?
A. It was not quite high water, and I wanted to see some of those timber-trap piling inside of the Bay.
Q. Then you went from the point "F," at the entrance of Boswell Bay, up to the point "G"?
A. Yes sir.
Q. On the westerly end of Boswell Bay, did you?
A. Yes sir.
Q. What is that distance, do you know?
A. That is about a mile and a quarter, something like that.
Q. Are you able to look at the scale and say how far it is?
A. Yes.
Q. Well, I wish you would do so.
A. (After scaling on defendant's exhibit "I.") Just a little over two miles.
Q. How long were you engaged in making the trip into Boswell Bay, the southerly end, or to the westerly end at point "G," and back to the entrance where the sand bar was?
A. From the time we left the entrance, going into the Bay, and back out again, and got our sand loaded, it was an hour.
Q. And got your sand loaded?
A. Yes. I figured on getting out of there at twelve o'clock.
Q. That sand was loaded at——
A. Point "F."
Q. —point "F," was it? How many tons did you take on?
237 A. About two tons.
Q. How was the tide at that time?
A. The tide was high water.
Q. High water?
A. Yes.

Q. When you took the sand on?
A. Yes sir.
Q. Well, I don't understand you. You said you could not load it, as I understood you, because of the high water, as you went in, and was it high tide when you——
A. I didn't load it when I went in because I had a little more flood tide yet. Yes, I had a little more flood tide yet, and while the tide was flooding I took advantage of that time to go up and see this timber up there and not take a chance on getting stuck inside at the same time.
Q. Then was the tide lower when you got back, or higher?
A. It was higher when I got back.
Q. You could not get up to that sand, was that it?
A. Yes, I could have got it, but I could get it just as well at deep high tide.
Q. You wanted to go up there?
A. Yes.
Q. You went up to see the timber?
A. Yes.
Q. Having come back to that point and loaded your scow, what time was it when you left point "F," or about?
A. It was about twelve o'clock.
Q. And after you left the mouth of Boswell Bay with your sand, going in a northeasterly direction up to the point "H" or
2:38 towards point "H," when did you begin to get dinner?
A. I began to get dinner just shortly after I left point "F."
Q. Who got the dinner that day?
A. I did.
Q. Who lit the fire?
A. I did.
Q. How did you start it?
A. I started it with kindling and some coal oil.
Q. Where did you get the coal oil?
A. In a can we had in the boat.
Q. How long did it take you to prepare the meal?
A. About forty-five minutes.
Q. That would bring you up to about 12.45, would it?
A. Yes sir.
Q. And where did you serve the meal?
A. I served the meal up on top of the cabin roof.
Q. What did you take up first?
A. I took up soup and bread and hardtacks.
Q. Meat?
A. Meat, yes.
Q. Did you take them all up at once?
A. I took them all at once, yes.
Q. What about the coffee?
A. Well, we took up coffee after *he* had our soup.
Q. You had your soup first?
A. Yes.

Q. Where were you at that time and place, indicate on the map about where you were at the time you served the soup?

239 A. We were a little bit the other side of point "H."

Q. A little bit the other side?

A. Yes.

Q. Just indicate it?

A. Well, I would indicate that right about here, at the cross there. (Witness making cross with lead pencil on defendant's exhibit "I.")

Q. So that the place where you served your soup was at the point indicated "X" on defendant's exhibit "I"—indicated by the figure "X" or letter "X"?

A. Yes.

Q. And what time was it at that place?

A. That was about 12.45.

Q. How long were you engaged in eating your dinner?

A. About twenty minutes.

Q. Did the boat stop while you ate your dinner?

A. No sir, kept right on going.

Q. Who was running her?

A. Why, Isaac Utness, was steering her.

Q. Indicate on the map, by some mark, the point at which you were when you finished your dinner?

A. Well, when we finished our dinner we were pretty close to the point "I" here.

Q. Just make the letter "M" there.

A. (Witness places letter "M" in lead pencil, at point indicated.)

Q. That is just west of the entrance of Canoe Pass, is it?

A. Yes, just——

Q. West of the entrance to Canoe Pass. That was about 12.45 you think?

240 A. Yes sir—or this was 12.45 here (indicating).

Q. What time was it when you reached point "M"?

A. That was after one o'clock.

Q. About what time after one?

A. Well, it was probably about ten minutes after one.

Q. And after you had finished the dinner, what did you direct, or did you direct the plaintiff to do anything?

A. Not the plaintiff in particular, no.

Q. State what took place then.

A. I says, "Now, boys, we have had our dinner and we had better wash up the dishes and slick up the boat in shipshape before we get in." And Ole Sandanger, he immediately volunteered to go down and wash the dishes, and says to the others on deck to pass them down, and John Jorgenson and Utness were standing right there at this steering post, and they passed down dishes to him, and just about then there was a big flare-up, a fire.

Q. How long after the plaintiff went down into the hold of the ship was it before there was a flare-up?

A. O, it was probably five minutes from the time he volunteered to go down until——

Q. Then did your boat stop?
A. No, not then exactly; it kept on going while the fire was on.
Q. The boat kept going?
A. Yes sir.
Q. Kept steering?
A. Yes, it just kept running. So soon as the flare-up was on, why, I rushed to do something for it, and Ole Sandanger was coming out of the cabin door all in flames and with the flame,
241 and just as quick as he got out so that he got clear I shut the door and hatch——
Q. And then what became of him?
A. —by that, smothering the fire.
Q. Did he jump overboard?
A. No sir.
Q. Or pushed overboard?
A. He ran around on deck with the other fellows. They were slapping him and hitting him with their hats and fanning him——
Q. Trying to get the fire out?
A. To get the fire out, and that took a few seconds. He went clear around there to the cabin, with his fire on him, and back again. By that time the fire had got smothered out, and the engine stopped, but just before the engine stopped and right after the fire was smothered out, then I turned my attention to Ole Sandanger, as quick as I possibly could, and I see he was all aflame and was in a dangerous position and condition, and I says to him "overboard, Ole, your only chance," and by that he was at the edge of the boat, and he went over; and almost immediately, why, there was a large plank there right alongside, and John Jorgenson and Isaac Utness—with their help, why, we pushed that plank over, and at the same time cautioned them not to hit him with this plank, because we were close to him and wanted to get the plank as close to him as possible without touching him with it, and we got it over and he got the plank, and in a few seconds—and we hollered to him to hang on and get the plank; and the engine had stopped. Just be-
242 fore we put the plank out, or about the time we were doing that, and then we put the rudder hard over and swung around and worked the boat over to where he was and picked him up; and getting back to him and picking him up and getting him on board and getting the engine started again took about fifteen minutes.
Q. Yes. And then where did you go?
A. Then we speeded up as hard as we could run for Cordova.
Q. And what time did you reach Cordova?
A. We reached Cordova at three o'clock. And then, as soon as we landed at Cordova, why, we ran up to the Blum-O'Neal store and got the telephone and telephoned for the doctor to be at the hospital to meet him when he got there, in case the doctor would be out some place, so that the doctor would be there by the time we could get to the hospital. And Isaac Utness—or John Jorgenson, I mean, he helped Ole Sandanger up to the hospital, and I told Isaac Utness to take care of the boat so that it would not go dry at the Cordova

wharf there. And by the time he got to the hospital and the doctor got there, it was 3.15.

Q. You reached Cordova, at the dock, at three o'clock?

A. At three o'clock, yes.

Q. Have you a record of that?

A. Yes sir.

Q. You kept a record of that, did you?

A. Yes sir, we got a record from the hospital about it—about the time that he entered there.

Q. He reached the hospital at what time?

A. At 3.15.

243 Q. Had this boat been in commission prior to this time, or had it made any trips?

A. It had made one trip.

Q. How were the tides on this day that you are speaking of?

A. The tide at this day was high water——

Q. I mean at the point when you got out here at the time of the accident?

A. At the time of the accident, it was ebb tide.

Q. And how was it at the time you left Point Boswell?

A. It was——

Q. Or Boswell Bay?

A. Just about high tide, fell in a few minutes. It was high water at 11.51 that day.

Q. How was the tide in the morning as you went down towards Boswell Bay from the cannery?

A. When we left the cannery it was low water and flooding.

Q. Have you examined the tide books to ascertain the condition of the tide at eleven o'clock when you reached the entrance to Boswell Bay?

A. Yes sir.

Q. What was the tide there.

A. That was my reason for taking the load of sand and getting out of there before the tide fell.

Q. I wish you would explain, Mr. Stensland, the hold of that vessel, the deck, tell us how it was constructed and the conditions surrounding it, where the stove was located in it, and where the engine room was, and describe the deck and the hatches and so on.

A. Well, the boat was a 28-foot double-ended boat, with a cabin on the front end of it—low cabin, and fish hatch about 244 amidships, and then the net room.

(Mr. Arctander:)

Q. The what?

A. A net room, the hold in the back end.

(Mr. McCord:)

Q. The hatches were right on the deck, were they?

A. The hatches are four inches above the main deck.

Q. How far above the deck where the hatches were was it up to the top of the cabin?

A. About two feet.

Q. And how did you get down into the cabin from the deck?

A. We got into the cabin from the deck through a door at one corner of the cabin, with a sliding hatch on the roof and a sliding door on the end of the cabin—back end of the cabin.

Q. So, that, in order to close the corner up—it was just like a square box there, was it, when that was closed?

A. Yes, pull the hatch back and then put this door in.

Q. And when the door was open and the hatch pushed back, you were right over the steps leading down into the hold, were you?

A. The stairway, yes sir.

Q. How far was it from the deck down to the bottom of the hold?

A. It was——

Q. Where the stove was located?

A. The cabin was about six feet in the clear inside.

Q. Which side of the boat was this door leading down into the cabin?

A. On the starboard side, and the stove was on the star-
245 board side.

Q. Where was the stove located with reference to the steps, the bottom of the steps leading down from the deck to the bottom of the cabin?

A. It was right in front of the steps.

Q. And what sort of stove was in it?

A. It was a Lang stove, sheet iron.

Q. Well, what size stove was it?

A. It was a four-hole stove, four holes in it.

Q. Sheet iron?

A. Yes.

Q. What sort of bottom was in it?

A. Cast iron top.

Q. What sort of a bottom did it have?

A. It had a sheet iron bottom. Everything was sheet iron excepting the top and lids.

Q. The top was iron, was it?

A. The top and lids are cast iron.

Q. You could take off the top?

A. Yes, take off the lids. Had an oven in it.

Q. Had what?

A. Had an oven.

Q. Yes.

A. And a firebox.

Q. Where was the firebox, in the front part of the stove?

A. The fire box was in the front part of the stove.

Q. And on this occasion was there any sand or ashes in it?

A. Yes sir, there was sand and gravel in the bottom of the firebox.

Q. About how many inches of sand, about?

246 A. About four inches of sand and gravel in the bottom of the firebox.

Q. Could you see the stove from the entrance to the doorway leading down from the deck to the cabin?
A. Not without stooping.
Q. You could stoop over and see it?
A. Stoop over and look in, you could see it.
Q. What sort of wood did you use in that stove?
A. We used fir wood from the boat shop in the Cordova cannery there.
Q. What sort of wood?
A. Why, it was short ends from planking—ends of planking and timber ends.
Q. Where did you keep this wood in the vessel?
A. We kept it in the cabin on the——
Q. Ricked up in there?
A. Ricked up underneath the seat that the stove sat on.
Q. The stove was not sitting on the bottom?
A. No, it sat on the bench.
Q. And how far about above the bottom or the floor of the cabin?
A. About eighteen inches from the floor of the cabin.
Q. You had the wood stored underneath?
A. A shelf right against the wall of the boat.
Q. Were there any broken boxes—salmon boxes there?
A. No.
Q. And how was the wood, was it wet or dry?
A. O, it was good dry wood.
Q. Always kept dry, was it?
A. Well, it was dry because we had just taken it out of the
247 boat shop, and fine first class lumber, only short pieces of it, and we split that up with a hatchect and used it for firewood.
Q. Did you keep any of your wood in the place where the fish were thrown?
A. No.
Q. The fish hatch, did you keep any wood over there?
A. No, we never kept any there, unless it was sometimes we would get a piece of 12 by 12 or a big cap end, that we would throw in there for a keepsake.
Q. On this day, the 7th of March, how much wood did you have there?
A. O, we had——
Q. I mean how much wood did you have in the cabin?
A. We had probably a couple of arm-loads—armfuls of wood.
Q. Enough to last you for how long?
A. Enough to make three or four fires.
Q. Good for three or four meals?
A. Yes, three or four meals.
Q. When did you go down to build the fire to get your dinner on the 7th of March?
A. That was close—shortly after twelve o'clock.
Q. Shortly after you left the entrance to Boswell Bay?
A. Yes, as soon as we left Boswell Bay——

Q. Tell how you made that fire?
A. What?
Q. Tell me how you made the fire?
A. I made the fire by splitting up some of this firewood, and put it into the stove, and poured a little of this coal oil out of this gallon coal-oil can into it, and put a match to it and the
248 fire was off.
Q. Did you have to replenish the fire before you finished your meal?
A. Yes, I put in wood a couple of times. Had a good hot fire while I was cooking the water for the soup and the coffee.
Q. What was the last utensil you took off the stove to finish your meal?
A. The last was our coffee.
Q. Did you take it off?
A. Yes sir.
Q. Was one of the caps on or off of the stove where the water was boiling?
A. I cooked the coffee down on the fire.
Q. Right on the fire?
A. Yes.
Q. Took the cap off?
A. Took the cap off, yes sir.
Q. Did you put the cap back after you had taken the coffee off?
A. Yes, I took the coffee pot off and put the cap on and passed it up and we poured our cups of coffee.
Q. What was the condition of the fire in the stove when you took the coffee pot off?
A. When I took the coffee pot off, there was a good bed of coals there in the stove, and it was hot.
Q. They were live——
A. Good live coals, yes sir.
Q. Blazing coals, were they?
A. Yes, good blazing coals.
249 Q. How much of it was there?
A. O, the whole bottom of the firebox was covered with it.
Q. How long did you say it took you after you took the coffee pot off to finish your meal?
A. After I took the coffee off—I took the soup and things up first and we ate that, about ten minutes, and then I got the coffee out and that was probably twenty minutes before I finished the meal when I took the coffee off and poured that.
Q. How long after you finished your meal was it before plaintiff went down to——
A. It was right immediately after we finished the meal.
Q. Did Mr. Utness have anything to do with putting the lid back on the stove?
A. No, no sir.
Q. Did he assist in taking the meal up?
A. He was not down there at all, while I was serving the meal, no.

Q. After you had finished that meal—I will ask you again, you have already stated it—but how long was it after you had finished that meal before the plaintiff went down to clean up?

Mr. Arctander: He said right away.

A. That was right immediately after we finished the meal.

(Mr. McCord:)

Q. Did you see the flare-up when it came—where were you at that time?

A. I was standing on the hatches.

Q. What did you see?

A. I saw the big fire flame coming out of the door of the
250 cabin.

Q. Could you see him inside of the cabin?

A. No, I could not see him then at all.

Q. Were you standing where you could see in the cabin?

A. Yes, I could look right into the cabin door from where I was.

Q. How long after he had got down was it—after the plaintiff had got down into the cabin, was it before you saw this flame?

A. It was probably five minutes after he went down into the cabin, that he volunteered to wash the dishes and fix up.

Q. What about this coal oil can, when was that put on the vessel?

A. That was put on the vessel the trip before.

Q. What do you mean by the trip before?

A. Well, that was the day before we went on another trip, and that was the first big trip that this boat had taken.

Q. Where was that trip?

A. That trip went down to the traps past Cape Whitshed.

Q. How far away from the cannery?

A. That day——

Q. On the 6th of March, the day before?

A. On the 6th of March, that was about fourteen miles down to the traps, and then out to Canoe Pass, this same place where this fire was, and then up to another little bay, cruising for pile timber, and we got grounded in that bay at low water.

Q. When did you leave on that trip in the morning, the
251 6th?

A. We left the morning of the 6th at eight o'clock.

Q. You had your breakfast that morning at the cannery?

A. Yes.

Q. Did you have lunch that day?

A. Yes.

Q. Who cooked the meal that day?

A. Isaac cooked the first meal that day. Just him and I together.

Q. Were you down there with him?

A. No, I was steering and he cooked the coffee.

Q. Who made the fire that day?

A. He made the fire that day. It was down at the traps.

Q. At the traps?
A. Yes.
Q. Then did you have dinner that night on the boat?
A. We had dinner that night at this bay where we stuck.
Q. What time was that?
A. That was about between six and seven o'clock that night.
Q. Who cooked the meal that day?
A. Well, that was Bert Bullinger and Isaac Utness.
Q. Who built the fire in the evening;
A. I could not tell you just exactly who built the fire that evening.
Q. You didn't build it?
A. No, I didn't build it that evening. It was one of the other two.
Q. You had two meals on the same vessel on the 6th of March, the day before this accident?
A. On the 6th of March, yes.
Q. How long were you held up on this bar?
252 A. We were held up there about three hours.
Q. Where was the bar?
A. It was in a little bay right across from Cordova.
Q. Did you light your lamps that night on the vessel?
A. Yes sir.
Q. Lanterns?
A. Yes sir.
Q. Where did you get the oil for them?
A. We got the oil out of this gallon coal oil can.
Q. Did you fill the lamps?
A. Yes sir.
Q. Did you have occasion to see the oil that was in there then?
A. Yes, I had occasion to.
Q. What sort of oil was it?
A. It was coal oil that I put into the side lights and the bright light.
Q. Was it coal oil?
A. Yes.
Q. It was not gasolene?
A. No, it was certainly coal oil.
Q. How much oil was left in the can at the time you finished lighting your lamps or your lanterns while you were on the bar the night before?
A. Well, filling the lamps, that was after we had our supper that night——
Q. Yes.
A. —and after we had filled the lamps the can was about half full.
Q. Then you went back to Cordova on the night of the 6th?
253 A. Yes sir.
Q. What time did you arrive there?
A. We arrived at Cordova about nine o'clock.
Q. Was any additional oil put into this coal oil can after you came back on the 6th?
A. No.

Q. Or on the morning of the 7th?
A. No sir.
Q. —was there any additional oil put in?
A. The morning of the 6th was the time the coal oil can was filled.
Q. Who filled this can on the morning of the 6th, when it was taken on board the vessel?
A. I did myself.
Q. You filled it on what date?
A. On the 6th.
Q. You hadn't had any trips before that?
A. No, we hadn't had no trips before and no occasion——
Q. Hadn't had any oil?
A. No occasion to use the lights or the fire in the stove.
Q. Where did you get this coal oil can?
A. We got this coal oil can upstairs and in our net lockers. The way the can——
Q. When did you get it?
A. The morning of the 6th.
Q. Who got it, you yourself?
A. I did myself, yes.
Q. What did you do with the can?
A. I took it down to the oil house and filled it with coal oil.
Q. Where did you fill it?
A. I filled it in the oil house.
Q. In what sort of a can?
A. Out of a fifty gallon drum.
Q. How was that drum marked?
A. That drum was marked with the ends painted white and stored in the oil house on the rack there.
Q. How did you take it out?
A. With a faucet on the end of the drum.
Q. Did you take it out yourself?
A. Yes sir.
Q. Took the oil out yourself?
A. Yes sir.
Q. And filled the can yourself?
A. Put the can under the faucet and turned the faucet.
Q. Did you see the oil?
A. Yes.
Q. And smelled it?
A. Smelled it.
Q. Do you now the difference between coal oil and gasolene?
A. Yes sir, I do.
Q. Can you distinguish the difference?
A. Yes sir.
Q. What was this oil that you put in there?
A. This was actual coal oil.
Q. Was there any gasolene put in there at all?
A. No, there was no gasolene put into that can.
Q. Then what did you do with it after you filled it?

A. I took it down to the boat that morning.

Q. Was that the only can of coal oil that was on the boat?

255 A. That is the only can of coal oil, yes.

Q. Was there any gasolene?

A. There was a five gallon can of gasolene.

Q. Where was that?

A. That was on the other side of the engine, on the port side of the boat, in a bunk there, in the lower bunk.

Q. How far from the stove was that?

A. O, that was about eight feet.

Q. After this flare up and the accident in question, what became of that can of gasolene?

A. That can was there intact.

Q. It was not burned or exploded or anything?

A. Not burned or exploded or hurt at all.

Q. That was there the next day?

A. Yes sir.

Q. Was the engine injured at all by this flare up?

A. No, only just slightly sooty or darkened.

Q. It blew the fire—it was a gasolene engine, was it?

A. Yes, it was a gasolene engine.

Q. It stopped. What caused it to stop, do you know?

A. The smothering—I smothered the fire out of the cabin, and then it stopped for want of fresh air to the carburetor, that is the reason it stopped.

Q. Are you positive that you did not take the coal oil can on board the vessel on the morning of the 7th instead of the morning of the 6th?

A. Yes sir. I had a short trip to make that day and had no reasons to think that I would be out any more than over the noon hour or the lunch hour.

Q. How much coal oil did you require per day, or I mean

256 how long would a gallon of coal oil last you for the purpose of lighting your lamps and cooking your meals out on a trip?

A. Well, a gallon can of coal oil would last ordinarily four or five days.

Q. How long, Mr. Stensland, would the coals in the stove remain hot after the fire had died down—such a fire as you left there when you examined it on the 7th?

A. Well, the coals may remain alive and red for about twenty minutes, with that kind of wood.

Q. Then how long would the heat remain in there?

A. Well, the heat would remain quite awhile after that; four inches of sand and gravel in the bottom of the stove, and the ashes with it.

Q. It would take him how long to cool off?

A. O, it would take them an hour or so to cool off so that they would——

Q. What sort of gravel was there kept in the stove?

A. Well, it was pretty fine gravel.

Q. It was not sand, it was part gravel and part sand, was it?
A. Yes.
Q. Where did you get it?
A. Well, we got it at the cannery, right at the beach there.
Q. About two inches of that, you say, in the stove?
A. About four inches in the stove, so that it would not heat down
nd burn the shelf it was on. The stove was set on racks—iron
acks, about six inches above this shelf that the stove sets on, and
e kept our dry wood and firewood under the stove and under this
bench, and the stove sat close up against the wall, and that is
57 the reason we had to have the stoves all filled with sand and
gravel in the bottom of them, so that the heat won't catch
re to the wood and burn that.
Q. Now, are you familiar with the places where the cannery had
ne gasolene and oil stored?
A. Yes.
Q. Where did the Carlisle Packing Company keep its coal oil and
here did it keep its gasolene?
A. It kept its coal oil in the oil house.
Q. And where is the oil house located?
A. That is located between the blacksmith shop and the China
ouse, close to the blacksmith shop. The gasolene and distillate
as kept on the wharf in front of the China house.
Q. And was there any coal oil kept out in front of the China
ouse with the distillate?
A. No.
Q. Where did you keep your coal oil?
A. We kept our coal oil—what we had on tap was in the oil house,
nd what there was besides that was right alongside of the oil house,
ith some barrels of paint and machine oil.
Q. How much coal oil did you have on hand at that time?
A. There was a fifty gallon drum in the oil house, that was on
p, and I don't know as there was any more coal oil outside of that.
Q. Where did the cannery get its supply of coal oil?
A. The cannery got it- supply of coal oil from Seattle.
Q. Did you get it from any other place up there?
A. No sir, unless it was—the only place they could get it
58 I believe, was Blum-O'Neal's and that would be in cans—
cases.
Q. In this oil house, then, there was just one can or one drum of
al oil?
A. Yes.
Q. That was on tap?
A. The fifty gallon drum.
Q. Did that have any words written on it—"Coal oil" or "Kero-
ne" or anything?
A. Yes, that had "Pearl Oil" stamped on the painted end of the
rum.

(Mr. Arctander:)

Q. What, "Pearl Oil"?
A. "Pearl Oil," they call it.
Q. Were there any other drums containing gasolene in the oil house?
A. No.
Q. How was the gasolene stored in the oil house?
A. The gasolene, what gasolene there was stored in the oil house was in cases, five gallon cans, boxed up in cases.
Q. In cases?
A. Yes, sealed goods.
Q. Where did the cannery company get its gasoline up there?
A. They got most of their gasolene from Katalla, and distillate from Katalla.
Q. How did you carry, or what sort of a receptacle or cases did you have your gasolene and distillate in?
A. Gasolene and distillate was always carried in 100-gallon drums.
Q. How were they indicated?
A. They were——
259 Q. How were they marked, I mean?
A. They were big drums, all marked with red ends.
Q. Red ends?
A. And right alongside of the bung was stencilled the contents of the can, with white paint, and the gravity and the name, either "Distillate" and gravity number, or "Gasolene" with its gravity number right alongside——
Q. After you got this can in the loft and came down, what time in the morning was it that you filled it on the morning of the 6th?
A. In the morning just before eight o'clock I filled it.
Q. Was it light?
A. Yes.
Q. Was it light?

Mr. Arctander: What was that? What time he filled the can?
Mr. McCord: Filled the can, yes.
Mr. Arctander: On the 6th.
Mr. McCord: Yes, on the 6th.

(Mr. McCord:)

Q. What time was it?
A. Just before eight o'clock on the 6th.
Q. In this oil house, was it light in there or dark?
A. O, yes, it was light then.
Q. Windows to it?
A. Yes, there is windows there, and the door open right in front of the rack.
Q. Were there any life preservers on this boat?
A. Yes sir.
Q. Where were they kept?

A. They were kept in the upper bunk in the cabin.

260 Q. How many?

A. Two of them.

Q. Now, when this plank was thrown over, after the plaintiff had jumped into the bay, I will ask you to state how far the plank was from him in the water when the plank went in after he did?

A. When the plank got into the water, it was about ten feet from him.

Q. In which direction, towards the bow of the vessel or towards the stern?

A. No, right—the momentum of the plank overtook him.

Q. Then it floated right up to him did it?

A. O floated right up in front of him and he swam towards shore to get to the plank.

Q. What size plank was it?

A. It was a 2 x 12.

Q. How long?

A. About 16 feet long.

Q. What is the distance from the entrance to Canoe Pass over to the dock where you landed on the afternoon of the 7th when you brought the plaintiff in?

A. Just about nine miles.

Q. Just about nine miles?

A. Yes.

Q. And you reached there at three o'clock?

A. Yes sir.

Q. And were you going full speed ahead?

A. Yes sir, we were going full speed.

Q. You were going against the tide, were you? Was the tide coming out?

261 A. The tide was going out, but part of the tide was with us and part of it was against us, so that the tide would make about an offset—standoff.

Q. Where was the tide against you and where was it with you?

A. It was against us on this part here.

Q. That is on which part, the part nearest Cordova?

A. Nearest Cordova, and that is nearest Canoe Pass.

Q. About how many miles was the tide against you and about how many miles was it with you?

A. Well, it was probably one-third of the way with us—or one-third of the way against us and two-thirds of the way with us.

Q. Have you had any experience with the use of coal oil in building fires?

A. Yes sir.

Q. Do you know anything about its properties or its tendency to flare up or explode?

A. Yes, I have had some experience with it.

Q. Assuming that there were some hot coals in the stove, what would be the effect of pouring——

A. If you pour coal oil into hot coals or onto anything that is hot that will heat that oil to generate gas——

Q. Or vapor?
A. Or vapor, yes, or gas vapor, that vapor will be explosive.
Q. When will it be explosive?
A. When it is heated up.
Q. Will it explode before a flame is touched to it, or not?
A. No, not unless the flame is touched to it.
Q. And if a flame is touched to it, what will it do?
A. Then it would, if it is not confined, it will make a big
262 flare, and if it is confined it will make an explosion.
Q. What about the explosiveness of gasolene, have you observed that?
A. Yes sir.
Q. What is the effect of that?
A. Gasolene—there is vapor arising from gasolene that would be confined and would be on the same principle as the vapor and gas that comes from coal oil when it is heated; and you put gasolene onto a fire, or pour it into anything like that, and touch a match to it, it will cause a big flare up.
Q. It will not explode?
A. No, it will just flare up, just the same as coal oil would if it was put onto something hot; but coal oil, if that is pourned onto anything cold like gasolene would be, that would burn in a flame, but not as quick as gasolene is.
Q. Was there any explosion——
A. No, no explosion.
Q. (Continuing:) —on this occasion, on the 7th of March, when the plaintiff was injured, was there any explosion?
A. No burst of any kind, or explosion, it was just a big fire.
Q. A flare-up?
A. A flare-up, yes.
Q. What damage was done to the interior of the cabin by this flare-up?
A. Well, there was calendars and magazine pictures hung around the wall, and paper sacks and things over the lunch box was in there.
Q. What happened to them?
263 A. They were just scorched black on the edges, and the inside of the cabin, where it was not painted inside, it was new lumber you know, looked new, that was darkened and black—not black, but it was darkened a bit.
Q. Were there any loose article around, in the way of kitchen utensils?
A. Yes, there was dishes in there.
Q. What happened to those?
A. They were all in there, all intact.
Q. Were any of them thrown out on the floor?
A. No.
Q. Stayed right on the shelves?
A. All right there where they were when they were passed down.
Q. Were there any of the skillets or teakettle or coffee pot or those things—what happened to them if anything?

A. Nothing happened to them at all; they were just the same as they were when they were passed down to him.

Q. Were they thrown down on the floor?

A. No, nothing scattered around or anything. It was just a big fire. The black was the smoke, you know, that came from the fire that was in there.

Q. Was the engine inside the cabin?

A. Yes.

Q. All under the same covering, was it?

A. Yes sir.

Q. Were there any loose articles in there affected by this flare up. I mean thrown off of their places?

A. Off of their places—no, nothing was thrown off of their
264 places.

Q. Nothing broken about the engine?

A. No.

Q. Just as soon as you turned the air on, you started her right up and she went right ahead.

A. Yes, opened the cabin door and let the fresh air get in, and primed her, and turned her over, and she went without any trouble at all.

Q. Nothing broken in the cabin at all?

A. No.

Q. Nothing dislocated from the place where it was laid?

A. No sir.

Q. What about the coal oil can?

A. The coal oil can was cracked open in the seam and down the side and the top of it was cracked open where it was soldered or clinched together.

Q. How about the bottom?

A. The bottom was all right.

Q. And where was the coal oil can lying?

A. It was lying on the floor in front of the stove—in front of the stove, in front of the engine.

Q. Did plaintiff tell you anything about how the accident occurred, right afterwards?

A. Yes.

Q. What did he say, how did he say it occurred?

A. Well, he was telling that he used the coal oil in there to build a fire with; and the first thing he wanted to know if it was gasolene in that can, and I told him "no it could not possibly be gasolene."

Q. Did he tell you how it occurred?

265 A. Yes. It——

Q. What did he say?

A. He said that he poured this oil on the fire to start it up with and—I don't remember whether he said that he put a match to it, or not, in particular, but he didn't talk very much about the fire right immediately, anyway. The main thing he was worried about was his burns, of course.

Q. You were worried about that, too?

A. We worried about that; and not paying very much attention to that part of it.

Q. Did you talk to him afterwards about whether or not he put a match to it?

A. No, I never questioned him particularly about it afterwards.

Q. You don't recall what he said in that regard?

A. No. I know we all divided up our clothes with him, got his wet clothes off and we all took part of our garments, dry you know and put on him, so as to keep him warm as possible, and also kept him from the breeze of wind that was blowing, to keep that from blowing direct on him.

Q. You got him back in the cabin did you?

A. Got him back there, stood him on the steps, stood him on the steps of the cabin.

Q. He didn't lie down or anything?

A. No, and then I held an oil skin coat in front of him, to keep the wind from blowing directly onto him.

Q. To what extent was he burned?

A. Why he was burned with—his hands, the skin was
266 hanging in rags from off his hands, and his face didn't look bad at all at the time. It was white nearly all over.

Q. Was he burned on the body when you took the clothes off of him?

A. There was some spots on the legs that was burned a little.

Q. Were his clothes burned through?

A. No, they were not burned clear through. They were burned so that they fell to pieces. His legs was burned in places, and his clothes was burned so that they just fell to pieces. Even his drawers was scorched brown.

Q. Have you got the Pacific Coast Tide Tables which apply to Alaska?

A. Yes sir.

Q. —Alaskan waters?

A. Yes sir.

Q. I will ask you if this book, identified as defendant's exhibit Number "2" entitled "Department of Commerce, Pacific Coast Tide Tables for Western North American, Eastern Asia, and many island groups, for the year 1917" is the tide tables that are applicable to these waters?

A. Yes sir.

Mr. McCord: I offer in evidence defendant's exhibit number "1" being the chart of the waters of Alaska, showing the course that the vessel took on the day of the injury. And also the United States Government Tide Tables for the year 1917.

The chart and United States Government Tide Tables, above referred to, were marked, respectively, Defendant's exhibits "1" and "2," same being returned herewith.

267 (Mr. McCord:)

Q. I will ask you if you could identify this can as the can that you took on board the vessel, that is, the coal oil can, was it the same can that you took on the vessel?

A. O, yes, it was the same can, yes sir.

Q. And after the flare up down there, could you still identify the can as being the same can that you had?

A. If I saw the can now I could tell it.

Q. Even though it was exploded——

A. Yes.

Q. —or burst?

A. Yes.

Q. To what extent was it broken up by this fire?

A. The seam down the side of the can, and then there is a round top on it with a spout with a screw top on it.

Q. Was the top entirely off?

A. No, just partly off.

Q. Just broken?

A. Just opened up.

Q. How about the seam?

A. The seam was opened up the same way.

Q. It was a round can, was it?

A. Well, it was not much out of shape, but it just opened up.

Q. Where the seam opened up on the side, how wide was the opening?

A. O, about an inch.

Q. And the bottom, was that blown clean off?

A. The bottom was not blown off at all.

Q. That was intact?

268 A. That was intact.

Q. How about the spout?

A. The spout was intact. It was just the seam where the round top soldered on the body of the can and then the seam down the body.

Q. The can never lost its identity at all, you saw it afterwards?

A. Yes sir.

Q. Was it the same can that you took on board on the morning of the 6th?

A. Yes sir, the very same can.

Q. What was Mr. Utness doing, did he help you make this fire on the 7th, was he down in the cabin when you were making the fire?

A. No, he was not in the cabin.

Q. What was he doing?

A. He was steering.

Q. At the time you made the fire?

A. Yes.

Cross-examination.

(Mr. Arctander:)

Q. Mr. Stensland, you are still in the employ of the Carlisle Packing Company?
A. Yes sir.
Q. You are now about to go up to Alaska again——
A. Yes sir.
Q. (Continuing:)—to work for them in a position next to the superintendent of their new cannery, are you not?
A. Yes sir.
269 Q. You have been promoted?
A. Yes.
Q. A bigger salary, greater salary and greater responsibilities——
A. Yes sir.
Q. (Continuing:)—than the position that you had at the time that this accident happened?
A. Yes sir.
Q. Did you not, after you had had your lunch and before this accident happened, run along the beach and tried to hunt ducks?
A. No sir.
Q. You did not? When the other witnesses say that, that is not true?
A. Well, we never——
Q. Well, just answer that "Yes" or "No," that is all.

Mr. McCord: I object to the question as irrelevant, incompetent and immaterial. That is passing on testimony of some other witness. It is not substantive testimony.
Mr. Arctander: Well, I will waive it, if you don't want it.

A. I can't answer that in one question.

Mr. Arctander: All right, that is all.

Redirect examination.

(Mr. McCord:)

Q. Did you shoot any ducks that day?
A. Yes sir.
Q. When?
A. While we were eating our lunch.
270 Q. Just state what occurred.
A. We were running on our straight course and we passed a duck that was swimming in the water, and it flew, and John Jorgenson shot that duck on the fly.
Q. Killed it?
A. Killed it, and we picked it up as we went by it, without altering our course or slowing our speed.
Q. The duck fell right in front of you?

A. Fell right in front of us. Steered right by it. And that is the extent of the duck shooting.

Q. How far above the water line was the batch deck? I guess that is what you call it.

A. The main deck of the boat was about twelve inches above the water line.

(Witness excused.)

271 STATE OF WASHINGTON,
County of King, ss:

I, Earl E. Richards, a notary public in and for the state of Washington, residing at Seattle in said county, do hereby certify that:

The annexed and foregoing depositions of the witnesses John Peterson and Ivar N. Stensland, on behalf of the defendant, were taken before me and reduced to writing by myself at Seattle, in said county and state, on February 14, 1918, and February 26, 1918, respectively, in pursuance of the annexed stipulation.

That the above named witnesses, before examination, were by me duly sworn to testify the truth, the whole truth and nothing but the truth.

That the defendant's exhibits "1" and "2," herewith returned, are the exhibits offered in connection with the deposition of the said Ivar N. Stensland.

That the reading and signing of said depositions by the witnesses was expressly waived by the respective parties hereto.

In witness whereof, I have hereunto set my hand and affixed my notarial seal, this 4th day of March, 1918.

[SEAL.] (Signed) EARL E. RICHARDS,
Notary Public in and for the State of Washington,
Residing at Seattle, in said State.

Notary fees, $7.60.

272 Filed Sept. 14th, 1920.

Department One.

No. 15407.

OLE SANDANGER, Respondent,

vs.

CARLISLE PACKING COMPANY, Appellant.

The plaintiff Sandanger, commenced this action in the Superior Court for King County, seeking recovery from the defendant packing company, for personal injuries alleged to have been the result of the negligence of the defendant in furnishing as a part of the equipment of one of its motor boats, upon which he was employed, gasoline in a one-gallon kerosene oil can, under such circumstances

as to induce him to innocently use it as kerosene; resulting in a flare-up or explosion, causing him to be seriously burned. Trial in the Superior Court, sitting with a jury, resulted in a verdict in favor of the plaintiff and a judgment rendered thereon in the sum of $4,175.00, from which the defendant has appealed to this court.

Respondent Sandanger is a resident of this state. Appellant packing company, is a corporation created and existing under the laws of this state, with its general offices in Seattle. It owns and operates a salmon cannery near Cordova, Alaska, in connection with which, it own- and operates several motor boats. On and prior to March 7, 1917, respondent was employed by appellant to work in and about its cannery, and also upon its motor boats as he might be directed. On that day he was assigned to duty upon one of appellant's motor boats, as one of the crew consisting of himself and three others, one Stensland being in command. The boat was 28 feet long, with an enclosed cabin forward, in which there was a motor near the middle, and a bunk and bench along one side, and a bench along the other side on which sat a small sheet iron wood burning stove used for cooking meals for the crew. Under the bench,
273 on which the stove sat, but further forward, and evidently in a safe place, there sat the one-gallon kerosene oil can here in controversy. This can with kerosene in it, had been furnished as a part of the boat's equipment, for the purpose of filling the lamps of the boat. According to conceded custom, kerosene was taken from the can and used to start fires in the small cook stove; that is, by first pouring a small quantity of kerosene on the wood and then applying a lighted match to the fuel so prepared. We here note in passing that there is no suggestion in the argument of counsel that such use of the kerosene constituted carelessness on the part of one so using it. Respondent had worked upon this boat as a member of its crew on several former occasions and was well acquainted with its arrangement and equipment, including the kerosene oil can; and also the custom of using kerosene from the can to start fires in the stove. About 7 o'clock in the morning of the day in question, the boat left the cannery to go some twenty miles southwesterly to a place where suitable sand could be procured for some contemplated masonry work, with a view to bringing back a load of the sand in sacks. The boat arrived at its destination about an hour or so before noon. The boat was provisioned for the noon meal of the crew, in view of the fact that the trip would take all day. One of the crew started a fire in the cook stove for the purpose of preparing the noon meal, using instead of kerosene, a bunch of waste, which had been saturated with oil from use in wiping the engine. The meal being prepared, and evidently the work of loading the sand being finished, the food was brought out on deck, where it was served and eaten. It seems that the boat at that time had started on its homeward journey, and the work of the day, other than washing the dishes, being finished the crew were at ease, and privileged to rest and enjoy themselves.

About an hour and a half or two hours after serving the
274 meal, when the fire in the cook stove was allowed to go out, and after it actually had gone out, and the stove and ashes

therein had become cold, according to positive testimony which the jury had a right to believe, respondent was directed by Stensland to start a fire in the stove and heat water to wash the dishes. He went into the cabin, placed some wood in the stove, took the kerosene oil can from its accustomed place, poured a small quantity of whatever was in the can on the wood, then holding the can in one hand, away from the stove, lighted a match, and dropped it upon the wood in the stove, when instantly there was a flareup of great violence amounting practically to an explosion, which was of such force as to cause some damage apart from the mere burning that immediately followed. Respondent was thrown across the cabin but soon recovered himself and rushed upon deck with his clothes on fire. His associates being unable to put out the fire on his clothes, he jumped overboard, when a plank was thrown to him, and he was taken on board. The fire in the cabin was extinguished and the boat proceeded to Cordova as fast as possible arriving there late in the afternoon, when respondent was given medical treatment. Respondent's counsel prosecuted the case and was awarded recovery upon the theory that appellant had negligently furnished gasoline in the kerosene oil can instead of kerosene, and that such act was negligence on the part of appellant rendering it liable to respondent for the injuries received in the manner we have described.

It is first contended in appellant's behalf that the trial court erred in overruling its challenge to the sufficiency of the evidence to support recovery, on the ground of its negligence, presented by proper motions timely made. Practically the whole of the argument of counsel touching this contention, apart from the federal maritime question to be presently noticed, has to do with the question of
255 whether the kerosene oil can contained gasoline or kerosene at the time respondent used whatever was in the can to start the fire in the stove. If it was kerosene, appellant would not be responsible for respondent's injuries; while if it was gasoline, it seems plain that because of the liability of gasoline to generate explosive gas when so used, appellant would be responsible for respondent's injuries; or, rather, a jury could well find from the evidence that the furnishing of gasoline under such circumstances was negligent and the proximate cause of respondent being injured. There was testimony fully warranting the jury in believing; that when the boat returned to the cannery from its previous day's trip there was no kerosene or other fluid in the can, it being all used that day in filling the boat's lamps, and there being none left, even for the starting of a fire in the cook stove on that day; that whatever was in the can at the time respondent was injured was put into it from appellant's store of supplies on shore between the time the boat returned the day before and the starting of the boat on its trip that day, and that no one attempted to use whatever was in the can, to start a fire in the cook stove that day, until respondent did so. The evidence does not disclose with certainty who filled the can or where it was filled, but there is some ground for inferring that it was filled by Stensland, the commander of the boat, from appellant's store of supplies on

shore. It in any event seems to have been his duty to see that the can was filled. There is some evidence tending to show that appellant did not exercise due care in keeping its gasoline and kerosene receptacles in its store of supplies on shore properly designated so that their respective contents would be readily distinguishable. This evidence is not very satisfactory, but is of some moment in view of what actually happened. The testimony of chemists and men of experience with reference to the comparative burning and explosive qualities of kerosene and gasoline, furnished the jury
276 abundant ground for believing that the use of kerosene in a cold stove in the manner respondent used whatever was in the can when he attempted to start the fire, would not cause any such an explosion as then occurred; while the use of gasoline in a cold stove in such manner would cause such an explosion. That is, by the pouring of a small quantity of kerosene on the wood, explosive fumes would not be generated sufficient to cause an explosion by the applying of a lighted match thereto; while such use of a small quantity of gasoline would generate fumes sufficient to cause such an explosion. There is no suggestion in the argument of counsel, indeed we think there is no ground therefor, that the contents of the can was other than kerosene or gasoline; so it becomes a question of the evidence showing with a fair degree of probability that it was gasoline instead of kerosene; that is, as to whether the evidence, was such as to take the answer to that question out of the realm of speculation and conjecture. Counsel for appellant rely upon our decisions which are reviewed by Judge Chadwick in Parmelee v. C. M. & St. P. R. Co., 92 Wash. 185, holding in substance that the evidence must be such as to prove a fact necessary to recovery, by a degree of certainty that removes the inquiry from the realm of speculation and conjecture. We have no disposition to recede from the holdings in these decisions. We are of the opinion, however, that the evidence introduced upon the trial of this case was such as to render these decisions without controlling force upon our present inquiry. Were we trying the question of fact which the jury were called upon to determine, we might not arrive at the same conclusion, but that is not sufficient to warrant us in ignoring the verdict. We are not the triers of the fact, but are permitted here to inquire only as to whether or not there was substantial evidence to suppport the conclusion the jury arrived at; that is, as to whether or not the evidence leaves the answer to the question as one of speculation and conjecture. We hardly
277 think it possible to state in general terms a rule which would furnish any exact measure for the decision of questions like this. Probably the language of Judge Chadwick in Frescoln v. Puget Sound Traction, Light and Power Co., 90 Wash. 59-65, comes as near as is possible of doing so, wherein he said:

"Speculation and conjecture, when used in this connection, mean the same thing. The cause of an accident may be said to be speculative when, from a consideration of all the facts, it is as likely that it happened from one cause as another. As soon as the balance of

possibilities is broken, the jury is put to the burden of weighing the evidence."

We think the jury was put to such burden in this case, and conclude that the trial court did not err in refusing to sustain the challenge made to the evidence in appellant's behalf, viewing this branch of the inquiry, as we have, apart from the federal maritime question, which we will now proceed to notice.

Counsel for apellant contend that respondent's recovery, as to its measure, is controlled exclusively by the maritime law as administered in the federal courts in admiralty cases, and that he possesses no rights whatever under substantive common law because his employment and service on the day he was injured was purely of a maritime nature; and, while admitting that respondent may seek recovery from appellant in the common law courts of the state, that his recovery is limited under the maritime law by the amount of necessary expenses he may incur in his cure, and maintenance while being cured, which is conceded to be $175, in addition to the service of that nature already rendered him by appellant.

It does seem that respondent's employment and service on the day in question was maritime in its nature. We shall so assume in our disposition of the case, without further discussion of that question.

The Minna, 11 Fed. 759;
Saylor v. Taylor, 77 Fed. 476;
Lawrence v. Flatboat, 84 Fed. 200;
Domenico v. Alaska Packers Assn., 112 Fed. 554;
The J. S. Warren, 175 Fed. 314;
The Virginia Belle, 204 Fed. 692;
North Alaska Salmon Co. v. Larsen, 220 Fed. 93.

Counsel for appellant invoke the federal statute defining the admiralty jurisdiction of the federal district courts, reading as follows:

"Sec. 24. The district courts shall have original jurisdiction as follows: * * *

"Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it; * * *"

36 U. S. Statutes at Large, 1091.

Proceeding upon the theory that this statute saves to suitors merely the right to sue in the common law courts and avail themselves of the procedure of those courts, and does not enable such suitors to avail themselves in those courts, any more than in the federal admiralty courts, of the rules of substantive common law as controlling of their rights; counsel for appellant invoke the principles of maritime law as announced by Mr. Justice Brown, speaking for the Supreme Court of the United States in The Osceola, 189 U. S. 158, 175, after reviewing the subject at length in the light of its historical development, as follows:

"Upon a full review, however, of English and American authorities upon these questions, we think the law may be considered as settled upon the following propositions:

"1. That the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued.

"2. That the vessel and her owners are, both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship.

"3. That all the members of the crew, except perhaps the master, are, as between themselves, fellow servants, and hence seamen cannot recover for injuries sustained through the negligence of another member of the crew beyond the expense of their maintenance and cure.

"4. That the seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew, but is entitled to maintenance and cure, whether the injuries were received by negligence or accident."

279 If our decision in Larsen v. Alaska Steamship Co. 96 Wash. 665 is to remain as a correct exposition of the law touching our present inquiry, that decision seems to us to be here decisive in favor of appellant. The employment and service of the plaintiff involved in that case was concededly maritime in its nature. He was injured while the ship was anchored off shore in Alaska waters, when at work preparatory to working cargo, by falling through a hatch of the ship upon his taking hold of an insecurely fastened chair pedestal to steady himself as he was about to descend through the hatch, which, giving way, caused him to fall and suffer the injuries for which he was awarded recovery. Contention was there made against the plaintiff's right of recovery upon the same theory in substance as the contention is here made in behalf of the appellant; but it was then thought by the members of this court participating in that case, that the decision of the Federal Supreme Court in The Hamilton, 207 U. S. 398, and other prior federal decisions, called for the conclusion that a substantive common law right could be invoked by the plaintiff apart from the maritime law; but the language of the decision also seems to clearly indicate that the plaintiff's right of recovery could be rested upon the exception to the limitations put upon seamen's recovery by the maritime law, mentioned in the second of the maritime law propositions above quoted from the Osceola decision. That is, that the vessel and her owner are liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, and as to such injuries are not limited to expenses incurred for maintenance and cure. Concluding his discussion of the legal basis of the plaintiff's right of recovery in that case Judge Chadwick, speaking for the court, at page 675, said:

280 "Our conclusion is that an action in personam may be maintained for a tort committed on the high seas if the

accident is attributable to the "unseaworthiness" of the vessel, that that common law courts of a state have jurisdiction concurrent with the Federal courts when proceeding in personam, and that the state court will grant the relief that a common law court would have granted had the case been originally triable in such court."

This, it seems to us, is but a recognition, and correctly so, that as to injuries resulting in consequence of unseaworthiness, the rules of common and maritime law, governing such a suitor's rights, are the same. Now, if the insecurely fastened chair pedestal, the giving way of which caused the plaintiff Larsen to be injured, was "in consequence of the unseaworthiness of the ship," as we think was correctly held in that case, so as to enable him to recover under the maritime law, which in effect adopts the rule of the common law as to injuries so occasioned, it seems to us equally plain that the negligent furnishing of gasoline as kerosene under the circumstances inducing its dangerous use, was was done in this case, rendered this boat unseaworthy in the same sense that the ship was rendered unseaworthy in the Larsen case. It seems hardly possible to state in general terms a definition of "unseaworthiness" as used in the maritime law in this connection which will furnish an exact standard in all cases, in determining just what defects in structure or equipment should be considered as rendering a vessel unseaworthy. In Carver on Carriage of Goods By Sea, 5th Edition, Section 18, it is said: "The ship must be fit in design, structure, condition and equipment to encounter the ordinary perils of the voyage. She must also have a competent master and a competent and sufficient crew." This was said having in view the general question of liability of carriers to the shippers; but we apprehend that the law calls for an equal degree of safety as to "design, structure, condition and equipment," looking to the safety of seamen. It seems to us that the negligent furnishing of the gasoline in the place of kerosene under such circumstances as was done in this case, was fraught with even greater perils than the furnishing of the insecure chair pedestal, as was done in the Larsen case. The former menaced the safety and even the lives of the entire crew, and the existence of the boat itself; while the latter was a menace only to the individual that might seek to use it in some such manner as Larsen did. The following authorities we think lend support to our conclusion that the maritime law does not stand in the way of respondent's recovery in this case.

The Titana, 19 Fed. 101;
The Neddlerman, 28 Fed. 855;
The Troop 128 Fed. 856;
The M. E. Luckenbach, 174 Fed. 265;
The Argo, 210 Fed. 873;
The Badger, 218 Fed. 81.

Counsel for appellant call to our attention and strongly rely upon the decision of the Supreme Court of the United States in Chelentis v. Luckenbach S. S. Co. 247 U. S. 272. That decision, it is argued, establishes the law as different from our conclusions reached in the

Larsen case, and also different from what was theretofore generally thought to be the law as gathered from expressions of the courts found in previous federal and state decisions. A seaman was washed overboard, and his leg broken, as it was claimed, as a result of a negligent and improvident order given by a superior officer. It was held that he could not recover as for injuries received "in consequence of the unseaworthiness of the ship," and therefore could not recover damages at all as for negligence. Plainly that was not a case of unseaworthiness of the ship. We think that decision does not express any view of the law contrary to our conclusion reached in the Larsen case, other than contrary to our seeming conclusion there reached, that Larsen's recovery could be rested upon the common law apart from the maritime law.

We conclude that respondent's recovery in this case may be sustained upon the theory that his injuries were received in consequence of the "unseaworthiness" of the boat upon which he was working.

282 A number of assignments of error are made by counsel for appellant, touching the court giving instructions and its refusal to give certain requested instructions. What is said in the briefs touching these claims of error is practically nothing more than assertions of error, they being presented to us practically without argument. We do not feel called upon to dispose of them other than in an equally summary manner, and deem it sufficient to say that as is disclosed by the record and brief of counsel before us, we are unable to say that the court committed any prejudicial error in the giving or refusing to give instructions.

The judgment is affirmed.

PARKER, J.

We concur:
HOLCOMB, C. J.
MAIN, J.
MITCHELL, J.
TOLMAN, J.

283 In the Supreme Court of the State of Washington, October Session, A. D. 1920.

Wednesday, Nov. 17, 1920.

No. 15407.

OLE SANDANGER, Respondent,

v.

CARLISLE PACKING CO., Appellant.

Judgment.

This cause having been heretofore submitted to the court, upon the transcript of the record of the Superior Court of King County,

and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 17th day of November, A. D. 1920, on motion of Aretander & Lysons, of counsel for respondent, considered, adjudged and decreed, that the judgment of the said superior court be, and the same is, hereby affirmed with costs; the petition for rehearing denied and the said Ole Sandanger have and recover of and from the said Carlisle Packing Company and from the American Surety Co., surety, the sum of $4,175.00, with interest thereon at 6 per cent per annum from September 10, 1918, until paid, and the costs of this action taxed and allowed at Ninety-seven and 65/100 Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said superior court for further proceedings, in accordance herewith.

284 Filed in Clerk's Office, Mar. 10, 1919. Percy F. Thomas, Clerk, by A. N. Olson, Deputy.

Copy.

15407.

No. 127,113.

In the Superior Court of the State of Washington for King County.

OLE SANDANGER, Plaintiff,

vs.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Defendant's Proposed Statement of Facts.

285 No. 127,113.

OLE SANDANGER

vs.

CARLISLE PACKING COMPANY, a Corporation.

Defendant's Proposed Statement of Facts.

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1 & 2 In the Superior Court of the State of Washington for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

vs.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Be it remembered, that heretofore and on to-wit, September 4, 1918, the above entitled cause came regularly on for trial in the above entitled court, before the Honorable Mitchell Gilliam, one of the judges of said court, in Department No. 4 thereof, sitting with a jury,

The plaintiff appearing by his attorney and counsel, Mr. John W. Arctander (of Messrs. Arctander & Lysons),

And the defendant appearing by its attorneys and counsel, Mr. E. S. McCord (of Messrs. Kerr & McCord), and Mr. Clyde M. Hadley (of Messrs. Hadley & Hadley),

Whereupon the following proceedings were had and testimony taken, to-wit:

3 Mr. Arctander: Your Honor, at this time I desire to introduce the Alaska law, which is pleaded in the complaint, and which counsel has candidly agreed that they will allow me to offer from the session laws of Alaska, and will admit that it is the law still in force and effect in Alaska, that there have been no changes or amendments whatever. I understand that is correct?

Mr. McCord: I do not offer any objection, Your Honor, to the statement made by counsel. We object to the introduction of the statute on the ground that it is irrelevant, incompetent and immaterial, not upon the ground that this statute which he offers is not the best evidence, we waive that question, but we preserve the right to object to the introduction, upon the theory and for the reason that it has no application to this case at all, is irrelevant, incompetent and immaterial, and particularly that part of section two of the Act where it provides that all actions hereafter brought against a master or employer such as is mentioned in the first section hereof to recover damages for personal injuries to an employe "the fact that an employe may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employe." That is the point I object to. This question as to what rule of law shall prevail in the forum where the action is being tried is the law of the forum; it is the law of the state of Washington as to what shall be denied or what shall be

4 permitted to be recovered in an action of negligence. It is true that a cause of action can be granted by a foreign state

or a foreign territory, and this court will recognize that cause of action, but when it comes to an action in this court to recover for damages for negligence, then it is not for the Alaska statutes or the Alaska Legislature to say what law shall govern the procedure in this court. In other words, the doctrine of comparative negligence does not prevail in this state, as I understand it, and it is impossible for the court to recognize any rule of law attempted to be established in Alaska covering that proposition or covering that point. And, therefore, it seems to me that this provision of the statute as to the right of the plaintiff to recover, notwithstanding he may be guilty of contributory negligence if his contributory negligence is slight, cannot control the procedure of this court, and you cannot adopt a rule adopted by the Legislature of Alaska in a trial of a case in this court, as to what instruction shall be given to the jury on the question of contributory negligence. If the plaintiff was guilty of contributory negligence, under the law of this state, it is the duty of the court to deny a recovery.

I object to it on the ground that it is incompetent, irrelevant and immaterial to any issue in this case.

The Court: Objection overruled.

Mr. McCord: Exception.

The Court: I presume it is the same as you have it copied in your complaint?

Mr. Arctander: Yes. I will only read the part I have copied.

The Court: You may read it to the jury.

Mr. Arctander: I want to say to Your Honor at this time, however, that according to my manner of trying this kind of a case, if there is any question about anything I am not going to have it in the record against me; if the verdict is given it is going to stand. The only decisions that there are upon the point as to this contributory negligence in other states prevail in my favor, that is, Tennessee and Kentucky, those are the only decisions there are and they are good as to the rule, but since it has not been decided by this court——

The Court: I have no question about the law.

Mr. Arctander: No, but I am going to tell Your Honor that since it has not been decided by this court, I refer in the instructions I ask that it be negligence just as it is in our court, and do not take any advantage of that section.

Mr. McCord: To that I object on the ground that on counsel's own statement it is wholly immaterial, Your Honor.

Mr. Arctander: This is only as to the contributory negligence part. I think we have a right to offer it.

The Court: I overruled the objection before.

Mr. McCord: On counsel's statement, I now add an additional objection on the ground that counsel has said he does not rely upon it at all, and I therefore ask the court to prohibit him from reading it to the jury, when he now says to the court that he has asked an instruction disregarding the Alaska law, or relies upon the Washington law.

The Court: Do you have such an instruction?

Mr. Aretander: No. I do not say a thing about the
6 Alaska law in the instructions. I merely make the issue upon contributory negligence, that the plaintiff cannot recover if it is contributory.

The Court: Very well. Objection overruled.

Mr. Aretander: I suppose I can waive any rights I have. Ladies and gentlemen, let me read to you, as I said——

Mr. McCord: Give me an exception, Your Honor.

The Court: Exception allowed.

Mr. Aretander (continuing): —the law of Alaska:

"Chapter 45.

An Act to Fix the Liability of Employers for Personal Injuries Sustained by Their Employees."

"Section 1. That every person, association, or corporation engaged in the business of manufacturing, mining, constructing, building, or other business or occupation carried on by means of machinery or mechanical appliances shall be liable to any of its employees"—leaving out in case of death—"liable to any of its employees * * * for all damages which may result from the negligence of any of its or his or their officers, agents, or employees, or by reason of any defect or insufficiency due to its or their negligence in the machinery, appliances and works.

"Sec. 2. That in all actions hereafter brought against a master or employer such as is mentioned in the first section hereof, to recover damages for personal injuries to an employee"——

I will waive the reading of the second section, if you have no objection, as long as I stand upon the law of Washington in that regard.

7 Mr. McCord: In order to keep the record straight as far as I am concerned, I now therefore ask the court to instruct the jury to desregard the statute counsel just read; first putting it before the jury and then saying he waives it.

Mr. Aretander: I have not read anything about contributory negligence.

Mr. McCord: He waives the right to that second section.

The Court: He is waiving section "b." Is the plaintiff insisting on section "a"?

Mr. Aretander: I insist on section "a."

The Court: Very well.

Mr. Aretander: If counsel objects to it and insists I shall read the whole thing, I will read it: But if he objects on the ground that it is not proper, of course I don't want any error on that ground.

Mr. McCord: I have made my objection.

The Court: I say that this section "*b*," I will consider that in my instructions. If you waive it——

Mr. Aretander: Yes, I just as leave waive that, I waive the section.

The Court: Yes.

Mr. McCord: It is now brought before the jury here, Your Honor, in the discussion, showing that under the law of Alaska, if the plaintiff was guilty of contributory negligence, if it be slight, he can nevertheless recover. It is different from the law of this state, but counsel has in this manner brought that matter before the jury and left it in their impression that that is a right which they have, but he says "I don't intend to rely upon it in the trial of this case; I have
8 got it before the court and into the record and before the jury, but I am not going to take the chance of being responsible for it." I ask the court at this time to direct the jury to disregard all reference to the provisions of the Alaska statute touching the difference in the doctrine of contributory negligence, as misleading and being contrary to what counsel has signified in open court that he is going to rely upon. He has, nevertheless, brought it before the jury in this discussion, and I ask that the court instruct the jury that that Alaska law has nothing to do with it, especially with this case, particularly in view of counsel's statements.

The Court. Well, you may submit an instruction such as you desire on that subject and I will consider it in giving my instructions to the jury.

Mr. McCord: I ask the court to give that instruction——

The Court: I will not instruct the jury at this time.

Mr. McCord: I say, I would like to have the record show that I except to Your Honor's refusal to instruct them at this time.

The Court: Very well. Proceed with your witness.

9 OLE SANDANGER, the plaintiff, having been first duly sworn, testified as follows:

(Mr. Aretander:)

Q. Your name is Ole Sandanger?
A. Yes sir.
Q. You are the plaintiff in this action?
A. Yes sir.
Q. How old are you?
A. Twenty-nine years old.
Q. Where were you born?
A. I was born in Norway.
Q. When did you come to this country, to the United States, how long ago,
A. About nine years ago.
Q. You have declared your intention to become an American citizen?
A. Yes.

Mr. McCord: I object to that as immaterial, Your Honor.

The Court: Objection overruled.

Mr. McCord: It is immaterial whether he is an American citizen or not.

Mr. Aretander: He has a right to be an American citizen.

Mr. McCord: He has a right to maintain this action, too.
The Court: Objection overruled.

(Mr. Arctander:)

Q. Are you married or single?
A. I am married.
Q. How long before you were hurt were you married?

Mr. McCord: I object to that as wholly immaterial.

A. Two months before I was hurt.

The Court: One moment. When an objection is made, do not answer until the court rules on it.

10 Mr. McCord: I object as immaterial—how long before his injury he was married—it has no bearing on this case.

The Court: Objection sustained.

Mr. Arctander: I offer it only for the purpose of showing or laying the foundation for the testimony of his wife showing his condition before he was married. That is the only object.

The Court: Sustain the objection.

(Mr. Arctander:)

Q. When did you arrive at Cordova?
A. The 13th of February, 1917.
Q. Under employment of the defendant?
A. Carlisle Packing Company.
Q. The 13th of February, 1917?
A. Yes sir.
Q. What day were you hurt?
A. The 7th of March, 1917.
Q. Where were you, or what instrument—or what place up there were you when you were hurt?
A. I was aboard a gasoline launch about 28 feet long.
Q. What was the name of it?
A. "C. P. C. No. 2."
Q. That means Carlisle Packing Company No. 2?
A. Yes sir, Carlisle Packing Company.
Q. What kind of a boat was it, in regard to being an open boat, or otherwise?
A. It was an open boat with a cabin on in the front.
Q. And let us impress upon you to speak loudly, Mr. Sandanger. The juryman down there in that corner has got to hear you, and the Judge and myself and those gentlemen at that table

11 Speak as loudly as you can, as if you were preaching.

Now, had you worked on that boat before the day that you were hurt on it?

A. Yes, I worked for two weeks, two weeks on board the same boat.
Q. For two weeks?
A. Yes.

Q. For the time of two weeks you had been on the boat?
A. Yes, for the time of two weeks.
Q. In other words, twelve or fourteen days?
A. Yes, something like that—fourteen days.
Q. That was the time that you had worked on the boat?
A. Yes sir, that was the time.
Q. When, with reference to the time that you were hurt, did you quit on that boat, how many days before?
A. I quit six days before.
Q. Then you quit?
A. Before I got hurt I quit on board the boat.
Q. I can't make out what you say; six weeks?
A. No, six days before I got hurt I quit on board the boat and then was working on the warehouse construction.

Mr. McCord: I didn't hear what he said.

(Mr. Arctander:)

Q. That would be about the first of March. I think I will bring that out. About the first of March that you quit on that boat then, was it?
A. Yes, about the first of March, yes.
Q. And up to the first of March you had worked on it for two weeks?
A. Yes, I had worked there for two weeks.
Q. Steady?
A. Steady.
Q. Did you or did you not work on it three days before you were hurt, or a day?
A. I worked on it for—well, it was four days before I got hurt.
Q. Four days before you were hurt?
A. Four days before I got hurt I worked on it one day.
Q. One day?
A. And that was last day.
Q. That was the last day you were on the boat until the day you were hurt?
A. Yes sir.
Q. Who was with you during the three weeks that you worked on the boat?
A. Mr. John Jorgenson. He was the captain and I was the engineer; was only two of us.
Q. Only two of you on at that time?
A. Yes.
Q. Did you cook any meals on the boat at that time?
A. No sir.
Q. How long after you came up there was it that you were put on this boat to work?
A. I was put on the boat the second day I came up there.
Q. The second day you came up there. This fourth day before you were hurt, when you said you were on the boat the last time before the day you were hurt, that would be then the 3rd of March?

A. Yes, about that, 3rd of March, yes sir.

Q. On that day tell the jury whether or not you were in
13 the oil house on the dock at the cannery?

A. Yes, I was in the oil house; four days before I got hurt, I was in the oil house.

Q. The fourth day before you were hurt?

A. Yes.

Q. On that day, what did you go in the oil house for?

A. I was in the oil house for priming oil for the machine, for the engine.

Q. Priming oil for the engine?

A. Gasoline.

Q. Priming oil is gasoline?

A. Yes sir.

Q. Now, tell the jury what there was in that oil house at that time in regard to containers of oil?

A. There was two hundred-gallon drums, one a kerosene and one gasoline, just standing side by side.

Q. On what?

A. On a rack, laying—built alongside of the wall.

Q. Out from the wall on a rack?

A. Yes, facing one end when you came in through the door.

Q. Were they standing up or lying down?

A. They was laying down alongside on the rack.

Q. As you came in the door, was there any one of them to your right or any one of them to your left more?

A. Yes, the gasoline drum was to the right and the kerosene drum was to the left when I came in through the door.

Q. And was there any other oil containers laying on that rack?

A. There was a barrel of lubricated oil.

Q. In a drum?

14 A. No, not a drum. A wooden barrel was laying on the same rack, about three feet away from the kerosene drum.

Q. Three feet further to the left?

A. Yes, further to the left.

Q. As you were coming in the door?

A. Yes.

Q. Were there at that time any other containers of oil not lying on the rack but standing up anywhere in the oil house?

A. No, there was barrels of paint and coal tar, but they were standing up and open in the upper end.

Q. And open in the upper end?

A. Yes.

Q. That was barrels?

A. Yes.

Q. These drums—called "drums," what were they made of?

A. They were made of iron.

Q. Were there any openings on them, or any place that could be opened on them?

A. There was an opening on top and cover was screwed off.

Q. You mean on the long side laying up?

A. On the long side laying— when it was laying down, the long side right on top.
Q. What was that?
A. I say little plug just screwed in there about two feet.
Q. What?
A. A little plug was screwed——
Q. Two feet?
A. No, I mean two inches.
Q. Two inches. Screwed into the top of the barrel?
A. Yes.
Q. As it was laying down?
A. Yes.
Q. Then was there anything on the front part of the barrel, the front end?
A. No, there was nothing in the front at all.
Q. Was there no opening there, nothing that could be opened?
A. No, I didn't see any.
Q. Didn't see anything?
A. No.
Q. No plug?
A. No, I didn't see any plug at all.
Q. Now, what was the color of those iron drums that you said laid there side by side?
A. It was black color, rusty iron color.
Q. Black rusty iron color. Was any part of those drums, either of the sides or of the top or of the end turning out toward the door painted in any way, by any color, either one of them?
A. No, there was no paint at all.
Q. No paint at all?
A. Not paint of any kind that I could see.
Q. No paint of any kind, neither white nor red, at the end of them?
A. No sir.
Q. The two were exactly alike, then; is that what you mean?
A. Yes, just exactly look alike, both of them—you could not tell any difference at all.
Q. You could not tell any difference?
A. No sir.
Q. Was there at the time anything painted, letters or any signs on them, to indicate what oil each of them contained?
A. No sir.
Q. Or indicate anything?
A. No sir, there was nothing, not marks of anything. Couldn't tell the difference at all.
Q. No letters painted or printed on them?
A. No sir, there was no letters.
Q. Was there any sign above them or around there anywhere, to show which was kerosene and which was gasoline?
A. No sir; couldn't tell the difference at all.
Q. Couldn't tell any difference. And at this time when you came

in the fourth day before you were hurt, what did you come in there for then?

A. I came in there for the priming oil for that engine.

Q. Priming oil?

A. Gasoline, yes.

Q. And did you have anything with you to get that in?

A. Yes, I had a little can, red can, that is made of copper; it is used for priming oil.

Q. It is used for the purpose?

A. Yes, used only for that purpose.

Q. It was red?

A. Yes; we used that.

Q. How big was it?

Mr. McCord: I object to that as immaterial, Your Honor. It was three or four days before. I object to it as immaterial, as to the size of the can that he brought in three days before.

17 The Court: Is it the same can?

Mr. Aretander: It would be proper because it would be in connection with the other testimony; that he had that before and used it, with reference to another five gallon can that was standing in the boat, which had been exhausted.

The Court: Objection overruled.

(Mr. Aretander:)

Q. What size was it, about?

A. It was about a quarter of a gallon?

Q. A quarter of a gallon?

A. Yes.

Q. That would make a quart, then. When you came in there this time about four days before, did you or did you not know which of the two drums contained gasoline and which one coal oil?

A. No, I didn't know at all. I had to test it, to put it in my hand to find out what was gasoline.

Q. Four days before?

A. Yes sir.

Q. You did it then too?

Mr. McCord: I move to strike that out as incompetent, irrelevant and immaterial and too remote.

The Court: Objection overruled. Motion denied.

Q. Did you do that at the time?

A. Yes.

Q. In what way could you get that to test it?

A. Well——

Q. What means did you have?

A. There was a pump we used for to pump the oil up, and I pumped a little in my hand and gasoline——

18 Q. From what?

A. From the gasoline drum I pumped first.

Q. Yes.

A. And then I saw it was gasoline, because the gasoline dries up when it gets in your hand, it dries up and——

Q. So you didn't pump from the other one that time?

A. Yes, I pumped from the other one too.

Q. At the same time?

A. Yes, to be sure that it was gasoline.

Q. To be sure?

A. Yes.

Q. And you got the gasoline and went out?

A. Yes.

Q. Now, had you during the time when you were there for the two weeks—any portion of the two weeks had you been in there before this time when you were in the oil house four days before?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. No sir, I was not in there, because I used to have a five gallon can of gasoline——

Mr. McCord: I object to that as not responsive.

(Mr. Arctander:)

Q. Was that the only time you were in to get any priming oil there, this four days before?

A. Yes sir, that is the only time.

Q. Very well. Now, before going there this time when you went in to get the oil, where you had been there two weeks before, where had you got your priming oil then?

Mr. McCord: I object to that as irrelevant, incompetent and immaterial, two weeks before the accident occurred.

The Court: Objection overruled. It is showing the conditions there.

Mr. Arctander: Yes, and that being in connection with the other matter there of the testimony about this five gallon can.

Mr. McCord: I object to it on the further ground that it is too remote; the conditions that were there two weeks before this accident occurred is too remote on which to predicate any negligence.

The Court: If it shows the conditions were the same, it would be admissible.

Mr. Arctander: This is not in regard to conditions in the oil house, Your Honor; it is a question in regard to where he got his priming oil. He says he was not in the oil house, this is the first time he was there. I asked him where he got his priming oil during the two weeks when he worked there, and as I understand him the testimony will be this, that he got it from a certain five gallon can which was standing in the bunk in the boat, the same five gallon can——

The Court: You want to show that he did not go for this.

Mr. Arctander: Well, that he got it from there and that he had exhausted that before he left.

The Court: Overruled.

Q. Now, so when you got it during those two weeks that you were there, where did you get it?

Mr. McCord: I object to that, Your Honor, on the ground that on counsel's statement it is incompetent, irrelevant and immaterial where he was getting his gasoline, if it was not from this place where the oil was kept, to show the conditions. What difference does it make, what possible difference can it make whether he got it somewhere else or not.

The Court: Objection overruled.

(Mr. Arctander:)

Q. Where did you get it during those two weeks—your priming oil?

A. I got it from a five gallon can that was standing in the lower bunk, lower bed.

Q. On this same boat?

A. The same boat, on the port side.

Q. Before you quit there, by the time you quit—before this time when you say you went into the oil house, state how much there was left of the gasoline in that five gallon can?

Mr. McCord: I object to that, Your Honor, as irrelevant, incompetent and immaterial.

The Court: I do not hardly see how that would be material.

Mr. Arctander: You do not understand it because you have not seen the depositions, but the claim is made—I don't know whether counsel wants to mislead the court or not—but the claim was made——

Mr. McCord: It might be admissible on a part of it, or in rebuttal, I do not think it is admissible at this time.

Mr. Arctander: Well, I thought I would have it in connection with his work theretofore. As to this five gallon can, it will be shown that it stood there at the bunk and that that did not explode—the contents of it. I wanted to show by this witness that that one was emptied out and was empty at the time of this accident; but coming in in connection with the explosion, I don't see that it makes any difference whether I show it now or later on.

The Court: Sustain the objection.

(Short recess.)

(Mr. Arctander:)

Q. Mr. Sandanger, on this 7th day of March, 1917, when you went to this motor boat or aboard this motor boat, what time of day was it when you went to work?

A. Seven o'clock in the morning.

Q. You had your breakfast before you left?
A. Yes sir.
Q. All of you?
A. Yes sir.
Q. Who was captain of the boat?
A. Iver Stensland.
Q. He was the foreman of the company up there?
A. He was the captain and the foreman.
Q. Who was engineer of the boat on that trip?
A. Isaac Utness.
Q. Isaac Utness?
A. Yes, Mr. Isaac Utness.
Q. And who were the crew?
A. Mr. John Jorgenson and I.
Q. And you. Do you remember that a fire was started in the stove in the forecastle of that boat, a little before lunch?
A. Yes.
Q. For the purpose of heating the lunch?
A. Yes.
Q. Who started that fire in the stove?
A. Mr. Utness started it.
Q. That same Isaac Utness?
A. Yes.
Q. And who cooked the lunch?
A. He did.
Q. Now, what time was it he started the fire, about what time of day?
A. He started that fire about twenty minutes after eleven.

(Mr. McCord:)

Q. What time?
A. Or a half an hour after eleven. Half past eleven.
Q. About half past eleven?
A. Yes.
Q. And that was Utness?
A. Yes.
Q. You saw him do it, did you?
A. Yes.
Q. Make the fire?
A. Yes.
Q. Positively?
A. Yes.

Mr. McCord: I object to that as leading and argumentative.
Mr. Aretander: All right. Withdraw it.

(Mr. Aretander:)

Q. What was it that was cooked for lunch there, warmed?
A. Vegetable soup.
Q. Vegetable soup and what else?

A. Coffee.

Q. Any meat cooked?

23 A. No sir.

Q. Did you have any meat for that lunch?

A. Yes, we had some cold meat from the cannery.

Q. Cold meat from the cannery?

A. Yes.

Q. Where was the dinner served, in the forecastle or on the deck or where?

A. Served on deck.

Q. Who brought it up?

A. Mr. Iver Stensland.

Q. Anybody else with him?

A. Isaac Utness.

Q. Those two brought it up?

A. Yes, them two.

Q. Where did you take your lunch, where on the boat did you take your lunch?

A. We took it on deck.

Q. How long a time did it take you to eat your lunch?

A. Took us about twenty minutes to a half an hour.

Q. Now, after you had taken your lunch, what did you do?

A. We was—after we had taken our lunch, we was running along the bay, hunting.

Q. Along the bay, hunting; hunting what?

A. Hunting for ducks and eagles.

Q. Ducks and eagles?

A. Yes.

Q. And how long a time did that take you—your hunting expedition?

A. Oh, about—ran along the beach about an hour and a half after we started eating.

24 Q. After you started eating or after you quit eating?

A. After we started eating—about an hour and a half up to two hours.

Q. An hour and a half to two hours?

A. Yes.

Q. How many did you shoot—how many ducks did you shoot?

A. I shoot—we shoot two ducks and a couple or three eagles.

The Court: Eagles?

A. Yes, eagles.

(Mr. McCord:)

Q. What else were you shooting?

Mr. Arctander: And eagles—two or three eagles.

(Mr. Arctander:)

Q. Now, if it was twelve o'clock you started eating and—you were through with your hunting about two o'clock. What did you do then?

A. Iver Stansland told me to go down and make a fire in the stove.
Q. For what?
A. To heat up the dishwater, wash the dishes.
Q. And what time about in the day was that?
A. It was about two o'clock.
Q. About two o'clock?
A. Yes.
Q. Did you obey his order, did you go down there to do it?
A. Yes, I went down.
Q. He told you to do it, did he?
A. Yes, Iver told me to do it.
Q. That is the captain?
A. The captain of the boat.
Q. Now, in the meantime, after the lunch had been warmed and carried up on deck, from that time and up to the time that you went down to start the fire, who of you had been down in the forecastle at all?
A. There was nobody down after they brought the lunch up.
Q. No one there that time?
A. No, I was the first one that went down after that.
Q. Before you went down there at this time at two o'clock, or about that time, when you went down to start the fire, had there been any fire put down there?
A. No.
Q. Any wood put in the stove by anyone?
A. No, nothing.
Q. What was the fuel which was provided for the boat for that day and with which the lunch was cooked?
A. It was broke up egg boxes, them thin egg boxes.
Q. Thin egg boxes?
A. Yes.
Q. Broken up?
A. That is all.
Q. What was the condition of that wood, that fuel, as to being dry or wet?
A. It was all wet. It was laying under the exhaust pipe on the port side?
Q. What?
A. Was laying on the port side under the exhaust pipe.
Q. Under the exhaust pipe?
A. Yes.
Q. Was there anything the matter with the exhaust pipe that day?
A. Yes.
Q. What was it?

Mr. McCord: I object.

A. She was leaking.

Mr. McCord: Hold on a minute. I object to that as immaterial.

The Court: I suppose it is only material, in fact, for the purpose of showing the condition of the wood.

Mr. Aretander: Showing that the wood was laying there and the exhaust pipe leaked.

(Mr. Aretander:)

Q. What is the fact in regard to whether there was anything the matter with the exhaust pipe, and, if so, what was it?

A. She was leaking, the water comes out.

Q. What?

A. She was leaking.

Q. Much or little?

Mr. McCord: I object to it as immaterial—irrelevant, immaterial and leading.

The Court: Overruled.

A. Not awful much. The water came a little all the time on the exhaust pipe.

(Mr. Aretander:)

Q. Did that have anything to do with the wood that was laying over in that place?

A. Yes, sure, the water was splashing all over the wood and half of the floor too.

Q. What?

A. The water was splashing all over the wood that was laying there.

Q. And what was it you said more?

27 A. And half of the floor, too, was wet from the exhaust pipe was leaking.

Q. Half of the floor was wet?

A. Yes.

Q. Do you know where that fuel was taken from when it was put down at this place in the forecastle, where it was kept before that?

A. They keep that before in the fish room.

Q. What is the fish room?

A. That is in the middle of the boat; use it to put the fish in.

Q. The hold of the boat?

A. Yes, there is a hole in the boat.

Q. How far did the hole extend in regard to the width of the boat, or whether it was the whole width or only a portion of it?

A. It was—I guess it was about ten feet long.

Q. I didn't ask you how long it was. Was that the length across, is that what you call the length?

A. Yes—no——

Q. Across the boat?

A. Across——

Q. Don't you understand English? I asked you how far that hole extended, whether to the edges of the boat or not, if it was in the center or where?

A. It was in the center.
Q. How wide was the boat?
A. It was from the cabin of the boat and aft.
Q. That is the boat, the length of the boat and width of the boat. How far did that hole go out, to the edges of the boat?
28 A. It was six inches on each side.

Mr. McCord: I object to it as leading.
Mr. Arctander: It is not leading.
Mr. McCord: He can describe the size of the hole. Counsel can ask it without telling how wide it was.
The Court: Objection overruled.

(Mr. Arctander:)

Q. Now, tell the jury, if you get a chance.
A. There was six inches back on each side of the boat.
Q. On each side of the hole?
A. Yes.
Q. Was there any cover for that hole?
A. Yes, we used hatches put on.
Q. Some what?
A. Hatches—boards.

The Court: Hatches.

(Mr. Arctander:)

Q. Hatches. Were the hatches tight or open?
A. No, they were not tight. Was about an inch between each hatch, or so.
Q. Between each board?
A. No—yes, that inch board.
Q. What was the condition up in that country during that spring in regard to raining?

Mr. McCord: I object to that as immaterial, irrelevant and incompetent.
The Court: Objection overruled.

A. It was raining pretty bad every day.

(Mr. Arctander:)

Q. What part of the day?
29 A. Oh, all the time, and in nights and day time.
Q. I mean of the day—you say pretty near every day, but how much of a portion of the day would it rain, either all day or a half a day or a short time?
A. It rained the whole day.
Q. State whether or not there was any coal at all furnished for the use of that stove on board the boat, or any coal at all?

Mr. McCord: I object to it as incompetent, irrelevant and immaterial.

A. No sir.

Mr. McCord: Wait when I object.

Mr. Aretander: You have to wait very often, but then you wait.

The Court: When an objection is made, let the attorney make the objection. He has a right to it. And wait until the court rules on it. If it is proper for you to answer, I will let you answer, and, if it is not, I will not let you answer.

Mr. McCord: I object to it as incompetent, irrelevant and immaterial.

The Court: Was it whether there was any coal on the boat?

Mr. Aretander: Yes, whether any coal was furnished at all.

The Court: Objection overruled.

A. No sir, there was not any coal.

(Mr. Aretander:)

Q. Now, this stove on which your lunch was cooked, where was that located, in what place on the boat?

A. On the starboard side.

Q. Well, that don't tell us where in the boat it was.

A. It was standing on a bench.

Q. Can't you understand? I want to know what portion of the boat it was.

Mr. McCord: He has already stated.

A. It was standing in the forecastle.

Q. Well, then, why didn't you say that. That is what I wanted to know. In the forecastle.

Mr. McCord: I object to counsel browbeating his witness, Your Honor.

(Mr. Aretander:)

Q. Where in that forecastle did that stove set?

A. It was stood on the starboard side, on a bench.

Q. And how was the bench fastened, where was the bench running?

A. It was running along the starboard side.

Q. Of the boat?

A. Yes.

Q. In the forecastle?

A. In the forecastle.

Q. Do you know how that bench was fixed, whether it rested upon anything along the wall?

A. Yes sir.

Q. What did it rest on?

A. It rested on braces.

Q. The bench was?

A. Yes.

Q. Did it go right up to the wall of the boat?

A. Yes, right up to the side of the boat.
Q. How high was that bench from the deck in the forecastle?
A. About two feet.
31 Q. Two feet?
A. Yes sir.
Q. How far, about, did it extend from the wall, how far did it come out from the wall?
A. Oh, about—came out about ten inches or twelve inches—about a foot.
Q. About a foot?
A. Yes.
Q. Did that stove—you said it stood on a bench; did it stand directly on a bench or not?
A. It was standing on a rack that was built for the stove.
Q. A rack built for it?
A. Built for the stove, yes.
Q. And up towards the wall of the boat, what did the rack rest upon, what was it fastened to?
A. The ends was fastened right in the side of the boat, and then there was two feet in front.
Q. In front of the stove?
A. Yes.
Q. There was two feet for the rack to extend——
A. For to rest on the bench.
Q. What were those?
A. There was iron.
Q. What was the rack?
A. Iron.
Q. And how high were these feet, about, in the front part of the bench?
A. About three or four inches.
Q. Three or four inches. What kind of a stove was this?
A. It was a thin cast iron stove.
32 Q. Cast iron stove?
A. Just like pipes, thin.
Q. Like the stove pipe, ordinary stove pipe?
A. Yes.
Q. Well, that is not cast iron, is it? Isn't that sheet iron?
A. Well, sheet iron.
Q. Well, why didn't you say so, then? A sheet iron stove. What size was it?
A. It was about two feet long and about one foot wide.
Q. One foot wide and how high was it?
A. About——
Q. The stove itself?
A. The stove itself, about eight inches high.
Q. Eight inches high. And you have seen these ordinary camp stoves?
A. Yes.
Q. Was it of that character?

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 195.

CARLISLE PACKING COMPANY, PETITIONER,

vs.

OLE SANDANGER.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

PETITION FOR CERTIORARI FILED JANUARY 3, 1921.

CERTIORARI AND RETURN FILED JUNE 23, 1921.

(28,029)

(28,029)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 672.

CARLISLE PACKING COMPANY, PETITIONER,

vs.

OLE SANDANGER.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

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(Filed in Supreme Court of Washington June 13, 1919. C. S. Reinhart, Clk.)

15407.

No. 127,113.

OLE SANDANGER, Plaintiff-Respondent,

v.

CARLISLE PACKING COMPANY, Defendant-Appellant.

Transcript on Appeal from the Superior Court of the State of Washington in and for the County of King to the Supreme Court of the State of Washington.

1 In the Superior Court of the State of Washington for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Amended Complaint.

Comes now plaintiff and for his amended complaint herein alleges:

I.

That plaintiff is a resident of the County of King, State of Washington.

II.

That defendant is and during all the time hereinafter mentioned was a corporation, duly organized, created and existing under and by virtue of the laws of the State of Washington, with its general offices in the City of Seattle, County of King, State of Washington, and that it at all the times hereinafter mentioned was engaged in the business of manufacturing canned salmon and in the business of operating a salmon cannery at or near Cordova, in the Territory of Alaska, and that the said business of canning salmon at said place was by it carried on by means of machinery and mechanical appliances, and that in and about said business it operated and ran several motor boats and tenders, propelled by machinery, and more par-

ticularly the motor boat and tender hereinafter mentioned and on board which plaintiff was employed and working at the time of receiving the injuries hereinafter set up and mentioned.

III.

That plaintiff was, on or about the 8th day of February,
2 1917, employed by defendant to work for it in and about all work which he should by defendant or any of its officers, managers or foreman be set and ordered to do in and about said defendant's manufacturing business and salmon cannery at Cordova, Alaska, and in and about and on any of its vessels, motor boats or tenders operated for or in connection with said cannery, and that he remained in the employ of the defendant up to the time of receiving the injuries hereinafter mentiond, and at the time of so receiving the same was so in the employ of defendant.

IV.

That there was, on the 30th day of April, 1913, by the Legislature in and for the Territory of Alaska duly enacted a law for said territory and for the adjacent waters of said territory, which law has never been repealed or modified but still is in full force and effect and was in full force and effect during the whole of the year 1917, which said law contained amongst other things the following provisions:

"*a*. That every person, association, or corporation engaged in the business of manufacturing, mining, constructing, building, or other business or occupations carried on by means of machinery or mechanical appliances shall be liable to any of its employees for all damages which may result from the negligence of any of its or his or their officers, agents or employees.

b. That in all such actions brought against a master or employer to recover damages for personal injuries to an employee, the fact that an employee may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee.

c. That all questions of negligence or contributory negligence shall be for the jury."

3 V.

That on the 7th day of March, 1917, plaintiff was by defendant sent on board a certain motor boat or tender, then and there operated by said defendant as a part of its said manufacturing plant, and which said boat or tender was then and there under the command and orders of defendant's foreman, one Iver Stensland, for the purpose of procuring and bringing to said defendant's cannery a load

f sand, to be used for the construction of a certain concrete appli-nce then built at said cannery.

VI.

That some time after dinner on said day it became the duty of laintiff to start a fire in a thin sheet-iron stove maintained by de-endant in the gallery of said motor boat, for the purpose of heating ater with which to wash the dishes which had been used by the ew of said boat for dinner.

VII.

That the wood provided and used for said stove was green and aw, so that it was impossible to start fire in said stove at said time ith the wood then on hand unless, after a certain supply of such ood had been placed in such stove, a small quantity of Kerosene il had been poured on to said wood in said stove and a lighted atch thereupon applied to the portion of said wood saturated with ch kerosene oil.

VIII.

That it was the general custom of the members of the crew of id motor boat, and of other boats of defendant, to light the fire n said stove in such manner and by said means, and in no other ay, and for such purpose it was the general custom of defendant to rnish for such boat a gallon kerosene can filled with such Kerosene il.

IX.

That by reason of the gross carelessness and negligence of defend-ant in keeping side by side of each other in its oil warehouse drums containing gasoline and drums containing kerosene without any of said drums being provided with any dis-nguishing marks or by any distinguishing color, and by reason of he carelessness and negligence of defendant and of its store keeper f said cannery and of its foreman acting as the captain in charge f and in command of said motor boat, said kerosene oil can pro-ded for such purpose was, shortly before the time when plaintiff as to light the fire in said stove for the purpose of heating water r such dishwashing, at the store room of defendant, by its store eeper and by the said Iver Stensland aforementioned, grossly, care-sly and negligently filled with gasoline oil instead of with kerosene il, and by said Iver Stensland carelessly and negligently, when so lled with gasoline oil, brought aboard said motor boat and care-sly and negligently placed in the galley of said boat at the place sually used for such kerosene can, without plaintiff or any of the her members of the crew being in any way informed of such reless and negligent substitution of such gasoline oil for such

kerosene oil, and without plaintiff being, by the exercise of ordinary care on his part, able to discover such substitution of the one oil for the other.

X.

That by reason of such gross careless and negligent substitution of such gasoline oil in said kerosene oil can for kerosene, and not otherwise, when plaintiff, after having placed a few sticks of wood in said stove and after having saturated the same with a proper quantity of what he believed was kerosene oil but, as it proved to be, with such gasoline oil, carelessly and negligently substituted in such can for such kerosene oil, was about to light said fire by applying to said wood on which such oil had been poured a lighted match, a violent explosion of the gases contained in and developed from said gasoline oil occurred, and that then and there and thereby said stove and the said oil can held by plaintiff in his left hand, at what would have been a safe distance from the stove and the fire therein lighted, had the same contained kerosene oil, as it should have, instead of gasoline, with great violence and with a great sheet of flame exploded, and that then and there and thereby plaintiff was enveloped in flames and was severely burnt and suffered terrible burns on both of his hands and forearms and on his left thigh, and also in the whole of his face, most severely on the left side of said face, and that by the forced inhalation of said flames the vital organs of his body were also injured, whereby he received severe and internal injuries all without any fault or negligence on his part.

That defendant further carelessly and negligently and contrary to the provisions of the laws of the Congress of the United States, and contrary to the rules and regulations of the Commerce Department of the United States, failed to provide and have on board of said motor boat any life preservers whatsoever, and that by reason of its failure so to have or provide on board said boat such life preservers, plaintiff, after his clothing had been set on fire, in vain efforts to obtain a life preserver before jumping into the sea to quench and extinguish the flames in his burning clothing, was by the delay thus caused for his jumping into the sea much more severely burned and sustained much more and severe burns, than he otherwise would have sustained, and by reason of the carelessness and negligence and unlawful conduct of said defendant was made to suffer much more aggravated pains and much more aggravated injuries and burns and made to suffer much greater damage than he would have, had such life preservers been provided and kept on said boat in such a manner that he could have availed himself of the same before jumping into the sea.

XI.

That by reason of said injuries so received as aforesaid plaintiff has been made to suffer most excruciating pains of body and mind and has become permanently disfigured and maimed, so as to be

unable to attend to his usual duties and work mainly by reason of the drawn condition of his burnt muscles and skin.

XII.

That plaintiff's permanent injuries so received as aforesaid besides the internal injuries aforementioned and besides a severe nervous shock, evidencing itself during all of the time thereafter and up to the present time, and, as he is informed and believes, liable to continue to so evidence itself for the full term of his natural life, by severe symptoms of nervousness, neuralgic pains, twitching and weakness of his hands, consist of:

1. Brownish pigmentation of the skin of his whole face.

2. Brownish pigmented scars with very tender skin on the whole dorsal surface of both hands, also partly extending out on the back of the fingers.

3. Keloid scars on the tip and on both wings of his nose.

4. Two wing shaped keloid scars taking in the whole border of the lower lip.

5. Extensive and disfiguring keloid scars on the left ear, more pronounced along the anterior border, and also in front of the same. Such keloid scars having a tendency to increase in size and to make his disfigurement more pronounced with the lapse of time.

6. Severe and permanent injuries to his eyes and eyesight.

XIII.

That by reason of all of said injuries plaintiff was for a long time kept under the care of a doctor and in a hospital, but that the expense thereof was borne by the defendant, but that later on, after returning to the state of Washington, plaintiff has for a long time suffered intensely from the internal injuries sustained by him from the inhalation of said flames, necessitating expenses and liabilities incurred by him in efforts to alleviate the sufferings thereby caused him, in and about services of physicians and surgeons, nursing and hospital bills in the sum of One Hundred Seventy five 00/100 Dollars ($175.00) and that he is informed and believes that he by reason of said internal injuries will be further necessarily subjected to like expenditures in the sum of $300 or more, and that he will never be able to fully recover from said injuries or to get rid of said sufferings.

XIV.

That prior to receiving said injuries plaintiff was by trade a fisherman and mariner and able to earn and did earn at the said trade wages at the rate of $100.00 per month and his board.

XV.

That by reason of said injuries he has ever since been prevented from carrying on his said trade and from earning any wages at the same, and that he is informed and believes that such disability for working at his said trade and for earning any wages at the same will, for a long time to come, if not for all time, continue all to his damage in the sum of Two Thousand 00/100 Dollars ($2,000).

XVI.

That besides and beyond the said special damages plaintiff has by reason of the premises been damaged in the sum of Eight Thousand 00/100 Dollars ($8,000.00).

XVII.

That no part of said damages has ever been paid.

Wherefore, plaintiff demands judgment against defendant in the sum of Ten Thousand four hundred and seventy-five 00/100 dollars ($10,475.00) together with the costs and disbursements of this action.

ARCTANDER & LYSONS,
Attorneys for Plaintiff.

STATE OF WASHINGTON,
County of King, ss:

Ole Sandanger being first duly sworn on oath says: That he is the plaintiff in the above entitled action; that he has read the foregoing, knows the contents thereof and believes the same to be true Amended Complaint.

OLE SANDANGER.

Subscribed and sworn to before me this 4th day of March,
8 1918.

JNO. W. ARCTANDER,
Notary Public in and for the State of Washington, Residing at Seattle, Wash.

Copy of within Amended Complaint received and due service of the same acknowledged this 5 day of March, 1918.

KERR & McCORD,
HADLEY & HADLEY,
Attorneys for Defendant.

Filed in Clerk's Office Mar. 5, 1918.
PERCY F. THOMAS,
Clerk.
By W. T. HATT,
Deputy.

In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff.

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Answer to Amended Complaint.

Comes now the Carlisle Packing Company, a corporation, the defendant in the above entitled cause, by Hadley & Hadley and Kerr & McCord, its attorneys; and for answer to plaintiff's amended complaint, herein, says:

I.

Answering paragraph IV of said complaint, this defendant says it has not knowledge sufficient to form a belief as to whether the allegations in said paragraph contained are true or not, and it therefore denies the same, and each and every part thereof.

II.

Answering paragraph VII of said complaint, defendant denies the same, and each and every allegation in said paragraph contained, and each and every part thereof.

III.

Answering paragraph VIII of said complaint, defendant denies the allegation that it was the general custom of defendant to furnish such boat with a gallon kerosene can filled with kerosene oil for the purpose of lighting fires; admits that it was the custom of defendant to furnish such boat with a gallon kerosene can filled with kerosene oil for the purpose of supplying the lanterns on board said boat with kerosene oil, and for no other purpose; denies the allegation that it was the general custom of the members of the crew of said boat and of other boats of defendant to light the fire in said stove by the use of kerosene oil; denies the allegation that it was the general custom to light said fires in no other way.

IV.

Answering paragraph IX of said complaint, defendant denies the same and each and every allegation in said paragraph contained, and each and every part thereof.

V.

Answering paragraph X of said complaint, defendant denies that there had been a substitution of gasoline oil in the said kerosene can for kerosene by defendant or its agents, or at all; denies that said wood was saturated with gasoline oil; denies that plaintiff poured gasoline oil upon said wood from said can or otherwise; denies that said can contained gasoline oil or any material other than kerosene; denies that plaintiff poured other than kerosene oil upon said wood; denies that plaintiff applied said match to said wood at what would have been a safe distance from said stove and the fire therein lighted, when kerosene oil was used upon said wood; denies the allegation that defendant failed to provide and have on board said motor boat any life preservers; denies all allegations in said paragraph contained that plaintiff was more severely burned and injured by reason of his alleged efforts to obtain a life preserver before jumping into the sea; denies the allegation that the plaintiff was without any fault or negligence upon his part; and denies all allegations in said paragraph that defendant was careless and negligent. As to all other allegations in said paragraph contained, defendant says it has not sufficient knowledge to form a belief as to whether the same are true or not, and it therefore denies the same and each and every part thereof.

VI.

Answering paragraph XI of said complaint, defendant de-
11 nies that the plaintiff received said alleged injuries as the re-
sult of any negligence on the part of said defendant; and as to all other allegations in said paragraph contained, defendant says it has not knowledge sufficient to form a belief as to whether the same are true or not, and it therefore denies the same.

VII.

Answering paragraph XII of said complaint, defendant says it has not knowledge sufficient to form a belief as to whether the allegations in said paragraph contained are true or not, and it therefore denies the same and each and every allegation in said paragraph contained, and each and every part thereof.

VIII.

Answering paragraph XIII of said complaint, defendant admits that it paid the expense of doctor's fees and hospital care as in said paragraph alleged; but as to all other allegations in said paragraph contained, defendant says it has not knowledge sufficient to form a belief as to whether the same are true or not, and it therefore denies the same and each and every part thereof.

IX.

Answering paragraph XV of said complaint, defendant denies the allegation that the plaintiff was damaged in the sum of two thousand dollars, or in any other sum; and as to all other allegations in said paragraph contained, defendants says it has not knowledge sufficient to form a belief as to whether the same are true or not, and it therefore denies the same and each and every part thereof.

X.

Answering paragraph XVI of said complaint, defendant denies the allegation that plaintiff has been damaged in the sum of eight thousand dollars, or in any other sum whatsoever.

And for a further answer and first affirmative defense, defendant alleges:

I.

That if the plaintiff was damaged by reason of said alleged injuries at or about the time and place mentioned in plaintiff's complaint, any injury or damage sustained by him was the result of his own negligence; that he was, at the time said accident occurred, supplied with dry wood upon said boat which he could easily have split into fine kindling which would have quickly lighted by applying a burning match thereto without the aid of kerosene oil or oil of any kind; that in order to save himself the labor and delay required to split such kindling, he, for his own convenience and wholly from his own choice, negligently attempted to use and did use kerosene oil and poured it upon the unsplit wood so that it might light upon the application of a burning match without the necessity of splitting and preparing the wood in the form of kindling; that he negligently used said kerosene oil in such an abundant quantity that upon the application of the burning match a great flame instantly arose therefrom which flashed so quickly that plaintiff was caught therein and his clothing was burned thereby; that in applying said burning match plaintiff stood so near said saturated wood that he was caught in said flame; that plaintiff well knew the danger of such flash from the lighting of wood saturated in such manner; that he fully understood the situation and knew the danger of standing so near the stove, as he was; that notwithstanding such knowledge on his part he wilfully and negligently stood in close proximity to the stove and the saturated wood when he applied the burning match; that his own negligence, imprudence and want of care, as aforesaid, caused or contributed to his injuries which resulted from and were the proximate cause thereof.

And for a further answer, and second affirmative defense, this defendant alleges:

13 I.

That if the plaintiff was damaged by reason of said alleged injuries at or about the time and place mentioned in plaintiff's complaint any injury or damages sustained by him was the result of his own negligence, that he was, at the time said accident occurred, supplied with dry wood upon said boat, which he could easily have split into fine kindling which would have quickly lighted by applying a burning match thereto without the aid of kerosene oil or oil of any kind; that in order to save himself the labor and delay required to split said kindling, he, for his own convenience and wholly from his own choice, negligently attempted to use and did use kerosene oil and poured it upon the unsplit wood so that it might light upon the application of a burning match without the necessity of splitting and preparing the wood in the form of kindling; that he negligently used said kerosene oil in such an abundant quantity that upon the application of the burning match a great flame instantly arose therefrom which flashed so quickly that plaintiff was caught therein and his clothing was burned thereby; that in applying said burning match, plaintiff stood so near said saturated wood that he was caught in said flame; that plaintiff well knew the danger of such flash from the lighting of wood saturated in such manner; that he fully understood the situation and knew the danger of standing so near the stove, as he was; that notwithstanding such knowledge on his part he wilfully and negligently stood in close proximity to the stove and the saturated wood when he applied the burning match; that plaintiff was at that time an employee and a member of the crew of said boat, being well informed as to all the facts and circumstances above stated; and by reason of the foregoing he then and thereby fully and voluntarily assumed the risk of any danger to him at that time and place.

14 Wherefore, defendant prays for judgment dismissing this cause, and also that it shall have judgment for its costs herein laid out and expended.

HADLEY & HADLEY,
KERR & McCORD,
Attorneys for Defendant

15 STATE OF WASHINGTON,
County of King:

Frank Wright, being first duly sworn, on his oath deposes and says; that he is an officer, to wit; president of the Carlisle Packing Company, a corporation, the defendant in the above entitled action, and makes this affidavit on behalf of said corporation as such officer; that he has read the foregoing answer, knows the contents thereof, and that the statements and allegations therein contained are true, as he verily believes.

FRANK WRIGHT.

Subscribed and sworn to before me this 19th day of March, A. D. 1918.

CLYDE M. HADLEY,
[SEAL.] *Notary Public in and for the State of Washington, Residing at Seattle.*

Service of the within answer to amended complaint is accepted and receipt of copy admitted this 26 day of March, 1918.

ARCTANDER & LYSONS,
Attorneys for Plaintiff.

Filed in Clerk's Office Mar. 26, 1918.
PERCY F. THOMAS,
Clerk.
By W. T. HATT,
Deputy.

16 In the Superior Court of the State of Washington for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Reply.

Comes now the plaintiff, and for his reply to the answer of the defendant to his amended complaint herein alleges:

I.

For reply to the first affirmative defense in said answer set up, plaintiff denies each and every allegation, matter, statement or thing in said first affirmative defense set up, and each and every part, portion and parcel of each and every such allegation, either in the manner or form as in said first affirmative defense of said answer set up, or otherwise.

II.

For his reply to the second affirmative defense in said answer of defendant set up, plaintiff denies each and every allegation, matter, statement or thing in said second affirmative defense of said answer set up, and each and every part, portion and parcel of each and every such allegation either in manner or form as therein set up, or otherwise.

Wherefore, plaintiff having fully replied to said answer and all the matters therein set up, prays judgment as in his complaint herein demanded.

ARCTANDER & LYSONS,
Attorneys for Plaintiff.

17 STATE OF WASHINGTON,
County of King, ss:

Ole Sandanger, being first duly sworn on oath says; That he is the plaintiff in the above entitled action; that he has read the foregoing Reply, knows the contents thereof and believes the same to be true.

OLE SANDANGER.

Subscribed and sworn to before me this 27th day of March, 1918.

JNO W. ARCTANDER,
[SEAL.] *Notary Public in and for the State of Washington, Residing at Seattle, Wash.*

Copy of within reply received and due service of the same acknowledged this 27th day of March, 1918.

HADLEY & HADLEY,
KERR & McCORD,
Attorneys for Deft.

Filed in Clerk's Office Mar. 28, 1918.
PERCY F. THOMAS,
Clerk.
By A. N. OLSON,
Deputy.

18 In the Superior Court of the State of Washington — and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Instructions Requested by Defendant.

The defendant in the above entitled cause hereby requests the court to give the following instructions to the jury:

I.

The Court instructs the jury that if you find from the evidence in this case that the plaintiff was injured, then before you can find

gainst the defendant you must find by a preponderance of the testi-ony or evidence that some act or omission of the defendant was he proximate cause of the injury.

II.

You are further instructed that by proximate cause is meant that ct or condition which, in the natural course of events and by e natural chain of causation, unbroken by some extraordinary unusual occurrence, would, according to ordinary human ex-erience, result in the state of affairs which immediately caused e injury.

III.

You are further instructed that in order to find against the de-ndant, its negligence as the proximate cause must be established your satisfaction by a preponderance of the evidence and must merely surmised, speculated or conjectured; that if from the idence you find that the injury might reasonably have been caused by circumstances not due to an act or omission of the defendant, then it will be your duty to find for the defendant.

IV.

You are further instructed that unless you find that the injury uld not reasonably have been caused by any circumstances other an such as might result from the negligence of the defendant will be your duty to find for the defendant; that no legitimate ference can be drawn that an accident happened in a certain way simply showing that it might have happened in that way, and thout further showing that it could not reasonably have happened any other way.

V.

You are further instructed that the evidence must show more than probability of a negligent act on the part of the defendant Com-any; that the cause must not be left to conjecture; that there annot be a recovery where it appears that the injury may have sulted from one of two causes, for one of which the defendant liable, but not for the other.

VI.

You are further instructed that there must be some evidence, ther direct or circumstantial, that there was negligence on the one le, an injury resulting in damages on the other, and that the jury and damages followed the negligence, and were produced ereby; and that it is not proving his case by circumstantial evi-ence for the plaintiff to show that there were causes, for which

the defendant would be liable, which could have produced the injury, without showing that it could not have been produced in any other manner, or in any manner for which the defendant would not be liable.

VII.

You are further instructed that where the testimony leaves the matter uncertain and shows that one of two things may have brought about the injury, for one of which the employer is liable and for one of which he is not, it is not for the jury to guess between these causes and find that the negligence of the employer was the real cause, where there is not satisfactory foundation in the testimony for that conclusion.

VIII.

You are further instructed that to hold the defendant liable, you must find that not only should the circumstances all concur to show that the thing charged happened in a particular way, but that they are inconsistent with any other rational conclusion.

IX.

You are further instructed that negligence is a fact to be proven by evidence, and not to be presumed upon conjecture or speculation.

X.

You are further instructed that verdicts must have evidence to support them, and must not be founded on mere theory or supposition; that in matters of proof, juries are not justified in inferring from mere possibilities the existence of facts.

XI.

You are further instructed that you may infer a result when the facts are established, but that you are not to infer a state of facts when no more than a possibility of such is shown.

XII.

You are further instructed that the fact of accident carries with it no presumption of negligence on the part of the employer, but it is an affirmative fact for the injured employee to establish that the employer has been guilty of negligence; that it is not sufficient for the employee to show that the employer may have been guilty of negligence, the evidence must point to the fact that it was; otherwise it will be your duty to find for the defendant; and you are instructed that no mere sympathy for the unfortune victim of an accident justifies any departure from settled rules of proof resting upon all plaintiffs.

XIII.

You are further instructed that if you find the proximate cause the injury to have been plaintiff's own carelessness and negligence, d that by such carelessness and negligence he contributed to his n injury, and that the injury would not have happened except r his own carelessness and negligence, then in that event you st find for the defendant.

XIV.

t is contended by the plaintiff that the defendant placed in its house at its cannery at Cordova, Alaska, two drums, side by side, containing gasoline and the other containing kerosene and that re was nothing on the outside of either of them to indicate its tents and that gasoline was of a more dangerous and explosive racter than coal oil when the gases developed from it should me in contact with fire and that the can of oil upon the boat at time the injury occurred was taken from one of these drums the oil house and that such can contained gasoline instead of rosene and that it was intended to be gasoline and that because larger drums of oil were undistinguishable that gasoline was ed in the gallon can for use on the boat instead of kerosene.

If you find from the evidence in this case that the larger oil ums in the oil house of the defendant at Cordova consisted only kerosene and that they were properly marked and identified d that the oil in the can upon the boat was taken from these ums, or one of them which was filled with kerosene, then I struct you that the plaintiff cannot recover in this action and your rdict must be for the defendant.

XV.

t is contended by the defendant that the drums of oil in its oil use at Cordova, Alaska were purchased from the Standard Oil Comy, in Seattle, Washington, and that drums were marked with ch ends with the words "Kerosene" or "Pearl Oil" painted thereon; t the drums were purchased from the Standard Oil Company in same containers and in the same condition that they were found Cordova in the oil house of the defendant on or about the 7th of arch, 1918.

If you find from the evidence that the defendant did purchase said ums from the Standard Oil Company upon the representation by e Standard Oil Company that they contained kerosene and not soline, and that such drums were marked so as to indicate kerosene d that there was no other mark or brand or indication from which e defendant, as a reasonably prudent person, could have ascertained at the drums contained other substances than kerosene, and if you rther find that the oil in the can upon the boat at the time of the cident was taken from such oil drums in such oil house of the

defendant upon the belief that it consisted of kerosene, then I in-
struct you that the defendant had a right to rely upon the repre-
sentation of the Standard Oil Company as to the contents of said drum
and if it was represented to be kerosene and the defendant, as a rea-
sonably prudent person, believed that it was kerosene, relying upon
the marks and indications made thereon by the Standard Oil Com-
pany, then I instruct you that the plaintiff cannot recover even
though you should find that the oil drums contained gasoline instead
of kerosene.

A person who buys an article in a sealed package under represent-
tion from a reputable seller as to its contents has a right to rely upon
such representations unless, by the exercise of ordinary prudence, he
could have discovered that the representation was false.

23 XVI.

If you find from the evidence in this case that the explosion from
which it is alleged the plaintiff was injured could reasonably have
been caused, under all the circumstances of this case, from an ex-
plosion of kerosene rather than from an explosion of gasoline, then
I instruct you that the plaintiff cannot recover and your verdict must
be for the defendant.

XVII.

Before the plaintiff can be entitled to recover in this action, you
must be convinced by a fair preponderance of the testimony that the
explosion resulting in the injury to the plaintiff must have been
caused by an explosion of gasoline and not by an explosion of kero-
sene.

XVIII.

I instruct you that the plaintiff cannot recover in this action if
there is a reasonable doubt in your mind from the evidence as to
whether or not the explosion resulted in any other way than from the
gasoline. The plaintiff must not only show by a fair preponderance
of the evidence that the injury resulted from an explosion of gasoline
but the plaintiff is also required to show by a fair preponderance of
the testimony that the injury could not have reasonably resulted in
any other way than by an explosion of gasoline. By the settled law
of this state the burden is upon the plaintiff to prove under the cir-
cumstances that the only possible way that this explosion could have
occurred was through gasoline and not kerosene and the plaintiff
must also prove that the explosion could not have occurred save
through the explosion of gasoline. If the explosion could have been
the result of kerosene or some other substance, the plaintiff is not
entitled to recover in this action and your verdict must be for the
defendant.

XIX.

Simply because the evidence of the plaintiff may tend to establish that the explosion might have resulted from the use of gasoline will not be sufficient to justify a recovery on the part of the plaintiff. It is not sufficient for the plaintiff to establish the fact that it might have occurred from a gasoline explosion, the burden is upon him to show that it did result from a gasoline explosion and that it could not reasonably have been due to an explosion of any other substance.

XX.

If you find from the evidence in this case that kerosene when heated or when poured upon heated or hot coals, sand or gravel will generate a vapor and that such vapor when so generated will explode if ignited by a flame of a match, and if you find from the evidence in this case that a vapor could have been generated from the use of kerosene ignited, then I instruct you that the plaintiff cannot recover and your verdict must be for the defendant.

XXI.

If you find from the evidence in this case that Ivar N. Stensland, at the time of the injury to the plaintiff on the 7th of March, 1918, was the master of the vessel upon which he was injured, and that the said Stensland filled the gallon can on the morning of the injury with gasoline instead of kerosene, and that the defendant had in its oil house at its cannery at Cordova a drum of kerosene and a drum of gasoline, side by side, and that Stensland by the exercise of ordinary prudence or by the exercise of the ordinary tests of smelling or by touring the same in his hands, could have determined before he placed the oil in the gallon can whether it was gasoline or whether it was kerosene and failed to do so, and by mistake placed in the gallon can gasoline instead of kerosene, and subsequently placed the said gallon can in the cabin of the vessel, and that the substitution of gasoline instead of kerosene in the gallon can was due to the negligence of said Stensland, and that the defendant company had no person knowledge of the mistake or negligence of the said Stensland, then I instruct you that your verdict must be for the plaintiff, but in a sum not in excess of One Hundred Seventy five ($175) Dollars.

XXII.

The injury claimed to have been sustained by the plaintiff occurred upon a vessel plying in the waters of Alaska. The injury sustained by him is defined to be a maritime wrong or tort because the injury that he sustained occurred upon a vessel upon navigable waters. For such maritime injury the plaintiff is only entitled to recover his wages for the period of his employment and his hospital and doctor

bills and expenses of his cure. He is not entitled to recover for lo
time or for permanent injuries or for pain or suffering or for in
ability to work or for present or future pain or suffering or for temp
rary or permanent injuries. He is only entitled under the maritim
law, which must be enforced in this case, for his wages, hospital an
doctor bills and the expense of his cure. The plaintiff has n
claimed any sum in excess of One Hunded seventy-five Dollars for hi
wages, hospital, doctor bills and expense of cure and I instruct yo
that in this case he is to be limited by you to the sum not in exce
of One Hundred Seventy-five Dollars and if you find a verdict fo
the plaintiff it must not be in excess of One hundred seventy-fiv
dollars.

XXIV.

The Congress of the United States has enacted a law providing th
ship owners shall not be liable for any debts, obligations or liabiliti
arising on board a ship beyond the value of the ship and the freigh
money for the current voyage during which the debt of liability aros
You will first determine the value of the vessel of the defend
26 ant upon which the plaintiff was injured and the freigh
money, if any, that the vessel earned on the voyage upo
which plaintiff was injured and under no circumstances can you
verdict be for a sum in excess of such value of said vessel and freigh
money for said voyage.

(This instruction is requested in the alternative that the court r
fuses to limit the amount of the recovery of the plaintiff to the sum
of $175.00.)

XXV.

I instruct you that the plaintiff is entitled to recover in this ca
in the sum of One Hundred Seventy five Dollars and you will pr
pare a verdict in favor of the plaintiff and against the defendant fo
the sum of One hundred seventy five dollars and no more.

XXVI.

The seaworthiness of a vessel is defined to be in maritime law, th
sufficiency of the vessel in materials, construction, equipment, o
fficers, men and outfit for the trade or service in which it is employe
and if you find from the evidence in this case that the vessel of th
defendant at the time she started upon the voyage upon which th
plaintiff was injured was in a seaworthy condition as measured by
the foregoing definition, then I instruct you that the plaintiff
limited in his recovery to not in excess of One hundred seventy-fiv
dollars. The test of seaworthiness is whether the vessel is reasona
ably fit to perform the service undertaken by the master and if yo
find from the evidence in this case that the vessel upon which th
plaintiff was injured was reasonably fit for the service intended
the commencement of the voyage, or that the defendant exercis

e diligence in attempting to make her seaworthy for said voyage, hen I instruct you that the plaintiff cannot recover in excess of One undred seventy-five dollars and your verdict must be in an amount t in excess of said sum.

XXVII.

If you find from the evidence in this case that a fire in the cook- stove just preceding the injury could have been started by the e of waste or by the use of paper or kindling wood, or in any other r other than by the use of kerosene or gasoline, then I instruct you t the plaintiff cannot recover in excess of the sum of One hundred enty-five dollars.

XXIX.

If you find from the evidence in this case that it is hazardous or ngerous or unsafe to attempt to start a fire in a stove upon a vessel, ther by the use of kerosene or by the use of gasoline, and that the intiff at the time he attempted to use either gasoline or kerosene start a fire in the stove on the day of the injury, by the exercise of dinary prudence might have known of the danger that might re- t from the use of kerosene or gasoline, then I instruct you that e plaintiff assumed the risk of the use of either kerosene or gaso- e on the day in question, and he cannot recover in excess of the m of One hundred seventy-five dollars for any injuries he may have tained as the result of the explosion on said vessel and your ver t must be for the plaintiff in a sum not in excess of One hundred enty-five Dollars.

Filed in open court Sep. 11, 1918.
PERCY F. THOMAS,
Clerk.
By F. D. CLEAVES,
Deputy.

In the Superior Court of the State of Washington for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, Defendant.

The Court's Instructions.

DIES AND GENTLEMEN OF THE JURY:

This is an action brought by the plaintiff against defendant for recovery of damages laid in the complaint at Ten Thousand Four

Hundred Seventy five ($10,475) Dollars for certain injuries claime
to have been sustained on the 7th day of March, 1917, by plainti
while working for defendant at its cannery near Cordova in Alask
such injuries being as plaintiff claims caused by the negligence
the defendant corporation or of its foreman in charge of a certai
motor boat, Ivar Stensland, or by the negligence of both of them.

A person is said to be guilty of negligence when he either do
something which an ordinarily careful person under the same ci
cumstances would not have done, or when he omits to do somethin
which an ordinarily careful person under the same circumstanc
would have done.

The basis of the action is negligence. The mere happening of a
injury to a person while in the service of another person or corp
ration does not in itself justify a recovery of damages for the injur
suffered. In order to give the servant a right to recover damag
from his master, the master or some one of his servants for wh
conduct he is responsible, must have been guilty of neg
29 gence causing the injuries and the servant injured must n
himself have been guilty of negligence on his part, which d
rectly and materially contributed to his injury.

In this case plaintiff claims that defendant placed and maintain
similarly looking drums, one containing gasoline and the other co
oil, side by side in its oil house at its cannery near Cordova in Alask
and that it negligently failed to indicate on these drums, or in an
manner, the contents of each of said drums, whether gasoline or co
oil, either by different colors on the end of each drum or by placin
words or signs of any kind indicating the contents of the respecti
drums on either one of them, and that defendant's foreman in charg
of the motor boat on which plaintiff was hurt and burned on Marc
7, 1917, either because there was nothing on the drums to show th
different contents of each of them, or because of his own careless ne
filled the can provided for the motor boat for coal oil to be used f
filling the lanterns and starting the fire with in the stove on the bo
with gasoline instead of with such coal-oil, and that he placed th
can, which was marked "coal-oil," but which was, at the time,
fact, filled with gasoline, at the place in the forecastle where the co
oil can usually was kept, and where persons making fire in the sto
would look for the can containing coal-oil and use the contents
such can for starting the fire with.

If the jury believes from all the evidence in the case that the
drums were placed by defendant for the use of its employees side b
side in the oil house, one drum containing gasoline and the other co
taining coal-oil and that there was nothing on the outside of eith
of them to indicate its contents, and that gasoline was of a mo
dangerous and explosive nature and character than coal-o
30 when the gases developed from it should come in contact wi
fire, and that an ordinarily careful employer would not, und
all the circumstances of the case have done this, then and in that ca
the jury would be justified in finding the defendant guilty of neg
gence in this regard, and if by reason of such negligence plaintiff w
burned and injured without himself being guilty of any negligen

ctly and materially contributing to such injuries then and in that
e the jury should find a verdict for plaintiff in such amount as it
ls that he has suffered damages by reason of the injuries he has
ained so caused by such negligence on the part of the defendant.
If on the other hand, the jury believes from the evidence either
defendant did not place the two drums side by side in the oil
se, or if they were so placed that the contents of each was prop-
r designated on the outside of the drums, or if not so designated
an ordinarily careful employer, under the same circumstances,
uld not so designate the contents of the drums, but if the jury at
same time finds that the foreman of defendant in charge of the
t, Ivar Stensland, could before he filled the coal-oil can from the
n have by a simple test found out whether it was coal-oil or gaso-
he filled the can with, and if the jury further finds that he did
before filling the can with gasoline, if you believe that he did in
fill it with gasoline, make any such test or in any manner try to
l out what oil he got, and if the jury further believes that an
inarily careful foreman or man in charge of the boat would not,
der the same circumstances, have filled the can or placed it where
did place it, without first finding out whether it was coal-oil or
oline he filled the can with, then and in that case the jury would
be justified in finding said Stensland guilty of negligence and
if the jury believe that by reason of such negligence on Stens-
land's part plaintiff was, without any negligence on his own
t, injured and burned, then in that event it should find a verdict
plaintiff in such sum as would fairly compensate him for the
mages he sustained by reason of such injury so caused by said
nsland's negligence.

If the jury believes from all the evidence in the case that both
fendant and Stensland were guilty of negligence in the regards
ed, and that such negligence on the part of both of them was the
ximate cause of the injury to plaintiff and that plaintiff was not
lty of any negligence on his part directly and materially con-
uting to the injuries, then the jury should return a verdict for
plaintiff for the damages he has sustained.

If the jury believes from the evidence that there were no life pre-
vers on the boat on this trip and that an ordinarily careful and
dent owner of such motor boat would, under the same circum-
nces not have sent the boat away from the cannery without pro-
ing it with one or more life-preservers, then and in that case the
y would be justified in finding defendant guilty of negligence in
having furnished the boat with one or more life-preservers as the
e might be, and if the jury further believes from the evidence
t such act or omission on the part of defendant was the proximate
se of plaintiff's suffering greater and more extensive and aggra-
ed injuries, than he would have suffered had such life-preservers
en provided, then and in that case the jury should allow plaintiff
verdict for such additional damages as would compensate him for
e greater, more extensive and more aggravated injuries caused by
ason of such failure to provide such life-preservers.

32 If the jury believes from the evidence that there was no negligence on the part of the defendant or Stensland in regard to the filling of the can, but find that defendant was guilty of negligence in not providing life-preservers for the boat, if none were provided, and that by reason of such failure to furnish life-preservers plaintiff's injuries sustained by being exposed to the fire were aggravated and his suffering made greater and more extensive, then it may return a verdict for plaintiff for the damages suffered by such aggravation of his injuries, but not for the injuries he would have suffered as a direct result of the accident had there been life-preservers aboard the boat. In other words, the aggravation of plaintiff's injuries caused by the absence of life preservers, if there was any such aggravation, would be the only damages for which you should award compensation under that state of facts.

On the question of whether the defendant or Stensland or both were guilty of any negligence causing plaintiff's injuries, the burden of proof is on the plaintiff, and before he can recover a verdict at your hands he must have convinced you by a fair preponderance of all the evidence in the case, that either defendant or Stensland or both of them were guilty of negligence in any of the respects charged in the complaint, and that such negligence on the part of either or both of them was the proximate cause of his injuries.

If the plaintiff has failed to establish by a preponderance of the evidence the fact that there was gasoline in the can from which he poured the oil onto the wood in the stove, then your verdict should be for the defendant, unless you should further find that there were no life preservers on board the boat and that the absence of
33 life preservers was the cause of his injuries being aggravated, in which case you should only find damages for the aggravation to his injuries caused by the absence of life preservers.

But when it comes to the question of whether any negligence on the part of the plaintiff himself either caused or materially and directly contributed to his injuries, the burden of proof changes and on this question the defendant must, in order to defeat plaintiff's recovery on the ground of contributory negligence, convince you by a preponderance of all the evidence in the case: First, that plaintiff himself was in fact guilty of such negligence, and, Second, that such negligence on his part either caused or materially and directly contributed to his injury.

On this question as well as on the question of negligence on the part of defendant the unfailing test is:

Does the fair preponderance of the evidence convince you, that he did something which an ordinarily careful and prudent man, under the same circumstances would not have done; or does this same fair preponderance of all the evidence in the case convince you that he failed to do something which such ordinarily careful and prudent man would have done under the same circumstances. If you in your mind answer both of these questions with "no" you cannot find plaintiff guilty of any contributory negligence which would defeat his right to recover in this action. But on the contrary if you answer both of these questions with "yes" then you should find the

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laintiff guilty of contributory negligence and your verdict should
for the defendant.

If you find under the evidence produced and under the instructions given you by the court that plaintiff is entitled to a verdict, then the amount which your verdict should give him becomes important.

If entitled to a verdict at your hands at all, the court instructs that he is entitled to receive full and fair compensation:

1st. For his necessary expenses paid or incurred to physicians and geons and for necessary hospital expenses in efforts to become ed from the injuries sustained by him, not to exceed however der this head the sum of One Hundred Seventy five ($175) llars.

2nd. For all loss he has sustained in and to his earning capacity as sherman and mariner which earning capacity is by the pleadings mitted to be the sum of One Hundred Dollars ($100) per month, compensation for loss under this head, however, not to exceed sum of Two Thousand ($2,000) Dollars including any future to such earning capacity, if you under the evidence find, that re is liable to be any future loss of earning capacity.

3rd. Full and fair compensation for his suffering and for all pains body and mind caused him by the injuries as well as for any and temporary or permanent disfigurement and for any temporary permanent maiming of any members of his body, if you find re was any such, also for any other temporary or permanent inries, which you should find that he has sustained, the damages der this head, however, not to exceed the sum of Eight Thousand 8,000) Dollars.

You will not itemize these different elements of damages. You ll add them up and find them all in a lump sum, which sum, how-er, cannot be more than the amount asked for in the complaint hich is Ten Thousand Four Hundred Seventy five ($10,475) Dol-rs, and you will then insert this lump sum, whatever it is, as the amount of your verdict.

Plaintiff in this case is claiming compensation for alleged future or permanent injuries. The degree of proof for future permanent injuries is greater than that required for past or present juries. As to the latter, plaintiff is only required to prove them by fair preponderance of the evidence but as to future or permanent juries the law requires the proof to be reasonably certain, and you ould not be justified in awarding compensation for any future or rmanent injuries unless the proof is reasonably certain that they ill follow as a result of the accident complained of.

By a "fair preponderance of the evidence" as used in these instructions is meant the greater weight of the credible testimony in the ase. It does not necessarily mean the greater number of witnesses estifying on one side or the other of a disputed proposition of fact, although the number of witnesses so testifying is a proper matter for

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you to take into consideration in determining where the preponderance lies. The preponderance of the evidence means the testimony of such witnesses as when tested by the rule given you for the purpose of determining the credibility of witnesses outweighs or overbalances the testimony on the other side.

You are the sole and exclusive judges of the evidence and of the credibility of the several witnesses and of the weight to be attached to the testimony of each. In weighing the testimony of a witness, you have a right to consider his or her demeanor upon the witness stand, the apparent fairness or lack of fairness, the apparent candor or lack of candor of such witness, the reasonableness or unreasonableness of the story such witness relates, and the interest, if any, you may believe a witness feels in the result of the trial, and any other fact or circumstance arising from the evidence which appeals
36 to your judgment as in anywise affecting the credibility of such witness, and give to the testimony of the several witnesses just such degree of weight as in your judgment it is entitled to.

You will be slow to believe that any witness has testified falsely in the case, but if you do believe that any witness has wilfully testified falsely to any material matter, then you are at liberty to disregard the testimony of such witness entirely, except insofar as the same may be corroborated by other credible evidence in the case.

You will take to the jury room the pleadings in the case, consisting of the complaint, answer and reply, the exhibits which have been admitted in evidence, these instructions and two forms of verdict. One form of verdict you will use in case you find for the plaintiff; the other you will use in case you find for the defendant. If you should find for the plaintiff then you will insert in that form of verdict the amount you find the plaintiff is entitled to recover under the evidence and the instructions I have given you and have it signed by your foreman. In case you find for the defendant all that is necessary is to have your foreman sign that form of verdict.

On retiring to the jury room you will select a foreman from among yourselves, whose duty it shall be to sign whatever verdict the jury agrees upon.

Ten or more of your number may agree upon a verdict and whenever ten or more have agreed upon the verdict, you will have it signed by your foreman as the verdict of the jury and return with it into open court.

Filed in Open Court Sep. 11, 1918.
PERCY F. THOMAS,
Clerk,
By F. D. CLEAVES,
Deputy.

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In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Exceptions of Defendant, Carlisle Packing Company, to Instructions Given by Court and to Refusal of Court to Give Certain Requested Instructions Asked by said Defendant.

I.

Defendant excepts to the instructions given by the Court and requested by the plaintiff on page V of plaintiff's instructions for the reason that said instruction is not a correct statement of the law applying to this case.

II.

Defendant excepts to the instruction given by the Court and requested by the plaintiff on page VI of plaintiff's instructions for the reason that said instruction is not a correct statement of the law applying to this case.

III.

Defendant excepts to the instruction given by the Court and requested by the plaintiff on page VIII of plaintiff's instructions, for the reason that said instruction is not a correct statement of the law applying to this case.

IV.

Defendant excepts to the instruction given by the Court and requested by the plaintiff on page IX of plaintiff's instructions, for the reason that said instruction is not a correct statement of the law applying to this case.

V.

Defendant excepts to subdivisions 2 and 3 and also the last paragraph of the instruction given by the Court and requested by the plaintiff on page XIII of plaintiff's instructions for the reason that said instruction is not a correct statement of the law applying to this case.

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VI.

Defendant further excepts to the refusal of the Court to give t
first instruction as requested by the defendant and numbered
for the reason that said instruction is a correct statement of the l
applicable to this case.

VII.

Defendant further excepts to the refusal of the Court to give t
second instruction as requested by the defendant and numbered
for the reason that said instruction is a correct statement of the l
applicable to this case.

VIII.

Defendant further excepts to the refusal of the Court to give t
third instruction as requested by the defendant and numbered II
for the reason that said instruction is a correct statement of the l
applicable to this case.

IX.

Defendant further excepts to the refusal of the Court to give t
fourth instruction as requested by the defendant and numbered I
for the reason that said instruction is a correct statement of the l
applicable to this case.

X

Defendant further excepts to the refusal of the Court to give t
fifth instruction as requested by the defendant and numbered V f
the reason that said instruction is a correct statement of the l
applicable to this case.

XI.

Defendant further excepts to the refusal of the Court to give t
sixth instruction as requested by the defendant and numbered V
for the reason that said instruction is a correct statement of the l
applicable to this case.

39 XII.

Defendant further excepts to the refusal of the Court to give t
seventh instruction as requested by the defendant and numbere
VII, for the reason that said instruction is a correct statement of t
law applicable to this case.

XIII.

Defendant further excepts to the refusal of the Court to give t
eighth instruction as requested by the defendant and numbere

VIII, for the reason that said instruction is a correct statement of the law applicable to this case.

XIV.

Defendant further excepts to the refusal of the Court to give the ninth instruction as requested by the defendant and numbered IX for the reason that said instruction is a correct statement of the law applicable to this case.

XV.

Defendant further excepts to the refusal of the Court to give the tenth instruction as requested by the defendant and numbered X, for the reason that said instruction is a correct statement of the law applicable to this case.

XVI.

Defendant further excepts to the refusal of the Court to give the eleventh instruction as requested by the defendant and numbered XI, for the reason that said instruction is a correct statement of the law applicable to this case.

XVII.

Defendant further excepts to the refusal of the Court to give the twelfth instruction as requested by the defendant, and numbered XII for the reason that said instruction is a correct statement of the law applicable to this case.

XVIII.

Defendant further excepts to the refusal of the Court to give the thirteenth instruction as requested by the defendant and numbered XIII for the reason that said instruction is a correct statement of the law applicable to this case.

XIX.

Defendant further excepts to the refusal of the Court to give the fourteenth instruction as requested by the defendant, and numbered XIV, for the reason that said instruction is a correct statement of the law applicable to this case.

XX.

Defendant further excepts to the refusal of the Court to give the fifteenth instruction as requested by the defendant, and numbered XV, for the reason that said instruction is a correct statement of the law applicable to this case.

XXI.

Defendant further excepts to the refusal of the Court to give the sixteenth instruction as requested by the defendant, and numbered XVI, for the reason that said instruction is a correct statement of the law applicable to this case.

XXII.

Defendant further excepts to the refusal of the Court to give the seventeenth instruction as requested by the defendant, and numbered XVII, for the reason that said instruction is a correct statement of the law applicable to this case.

XXIII.

Defendant further excepts to the refusal of the Court to give the eighteenth instruction as requested by defendant, and numbered XVIII, for the reason that said instruction is a correct statement of the law applicable to this case.

XXIV.

Defendant further excepts to the refusal of the Court to give the nineteenth instruction as requested by the defendant, and numbered XIX, for the reason that said instruction is a correct statement of the law applicable to this case.

41 XXV.

Defendant further excepts to the refusal of the Court to give the twentieth instruction as requested by the defendant, and numbered XX, for the reason that said instruction is a correct statement of the law applicable to this case.

XXVI.

Defendant further excepts to the refusal of the Court to give the twenty-first instruction as requested by the defendant, and numbered XXI, for the reason that said instruction is a correct statement of the law applicable to this case.

XXVII.

Defendant further excepts to the refusal of the Court to give the twenty-second instruction as requested by the defendant, and numbered XXII, for the reason that said instruction is a correct statement of the law applicable to this case.

XXVIII.

Defendant further excepts to the refusal of the Court to give the enty-third instruction as requested by the defendant, and numbered XXIII, for the reason that said instruction is a correct statement of the law applicable to this case.

XXIX.

Defendant further excepts to the refusal of the Court to give the enty-fourth instruction, as requested by the defendant, and numbered XXIV, for the reason that said instruction is a correct statement of the law applicable to this case.

XXX.

Defendant further excepts to the refusal of the Court to give the enty-fifth instruction as requested by the defendant, and numbered XXV, for the reason that said instruction is a correct statement of the law applicable to this case.

XXXI.

Defendant further excepts to the refusal of the Court to give the twenty-sixth instruction as requested by the defendant and numbered XXVI, for the reason that said instruction is a correct statement of the law applicable to this case.

XXXII.

Defendant further excepts to the refusal of the Court to give the enty-seventh instruction as requested by the defendant, and numbered XXVII, for the reason that said instruction is a correct statement of the law applicable to this case.

XXXIII.

Defendant further excepts to the refusal of the Court to give the enty-eighth instruction as requested by the defendant, and numbered XXVIII, for the reason that said instruction is a correct statement of the law applicable to this case.

XXXIV.

Defendant further excepts to the refusal of the Court to give the enty-ninth instruction as requested by the defendant, and numbered XXIX, for the reason that said instruction is a correct statement of the law applicable to this case.

KERR & McCORD,
HADLEY & HADLEY,
Attorneys for Defendant,
Carlisle Packing Company.

Service of the within — is accepted and receipt of copy admit
this 10 day of January, 1919.

ARCTANDER & LYSONS,
Attorneys for Pl

Filed in Open Court Jan. 10, 1919.
PERCY F. THOMAS,
Clerk.
By F. D. CLEAVES,
Deputy.

43 In the Superior Court of the State of Washington for
County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

THE CARLISLE PACKING COMPANY, Defendant.

Verdict.

We, the jury in the above entitled cause, do find for the plain
in the sum of — Dollars ($7,175.00).

J. P. THOMPSON,
Foreman

Filed in Open Court Sep. 11, 1918.
PERCY F. THOMAS,
Clerk.
By F. D. CLEAVES,
Deputy.

44 In the Superior Court of the State of Washington in a
for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Motion for Judgment non Obstante and in the Alternative fo
New Trial.

Comes now the above named defendant by its attorneys K
& McCord and Dorr and Hadley and moves the court for an or
reducing the verdict returned by the jury herein to the sum
One hundred and Seventy-five Dollars ($175) and costs notwi

nding the verdict heretofore returned by the jury, which motion based upon the files on record herein and is made for the reason d based upon the following grounds:

I.

That the amount of said verdict is excessive and appears to have en given under the influence of passion and prejudice.

II.

That the evidence adduced herein at the time of the trial of s action is insufficient to justify a verdict in excess of the said e hundred seventy-five dollars ($175) and that any verdict ren- ed in excess thereof is against the law.

III.

That there was error in law occurring at the trial of this action excepted to at the time by this defendant.

IV.

That there is no evidence whatsoever adduced at the trial of s action which would, according to law, support a verdict in r of the plaintiff and against the defendant in a larger sum n one hundred seventy-five dollars ($175) and costs.

And in the alternative, in the event of the foregoing motion being denied, this defendant moves the court for an r granting it a new trial upon the following grounds and for following reasons:

I.

regularity in the proceedings of the court and jury at the trial this action and abusive discretion by which this defendant was vented from having a new trial.

II.

lisconduct of the plaintiff and jury.

III.

ccident and surprise which ordinary prudence could not have ded against.

IV.

Newly discovered evidence material for this defendant which ould not with reasonable diligence have discovered and produced he trial.

V.

Excessive damages appearing to have been given under the influence of passion and prejudice.

VI.

Insufficiency of the evidence to justify the verdict and that the same is against the law.

VII.

Error in law occurring at the trial excepted to at the time by the defendant.

KERR & McCORD AND
DORR & HADLEY,
Attorneys for Defendant.

Copy of within Mo. for Judgm. N. O. V. received and due service of same acknowledged this 11 day of Sept., 1918.

ARCTANDER & LYONS,
Attorneys for Plf.

Filed in Open Court Sept. 11, 1918.

PERCY F. THOMAS,
Clerk.
By F. D. CLEAVES,
Deputy.

46 In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Order.

Upon hearing the defendant's motion herein for order for judgment for the sum of One hundred seventy five ($175) Dollars and costs only notwithstanding the verdict heretofore returned by the jury herein and the court being fully advised in the premises:

It is hereby ordered that said defendant's motion for judgment notwithstanding the verdict be and the same hereby is in all things denied.

Defendant is granted an exception to this order.
Done in open court this 27th day of January, 1919.

MITCHELL GILLIAM,
Judge.

Filed in clerk's office Jan. 27, 1919.

PERCY F. THOMAS,
Clerk.
By W. T. HATT,
Deputy.

In the Superior Court of the State of Washington in and for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Order Denying Motion for New Trial.

This matter came before the court on defendant's motion for a new trial herein;

Now therefore, after hearing the parties and being fully advised in the premises, it is hereby ordered, that said motion be and the same hereby is in all things denied provided plaintiff within ten days from this date make and file his consent herein remitting from the amount of the verdict rendered herein the sum of Three Thousand ($3,000) Dollars.

And upon the filing of such consent of remission of such sum of Three thousand ($3,000) Dollars, it is further ordered that judgment be entered and rendered herein upon said verdict so reduced, to wit, for the sum of Four Thousand One hundred seventy five ($4,175) dollars and interest on said sum at six per cent per annum from and since the date of the return of said verdict, to wit from and since September 10th, 1918, together with the costs and disbursements of this action as taxed, the order heretofore made herein staying the entry of judgment herein being hereby vacated.

It is further ordered, that if plaintiff shall fail to file within thirty days after this date his consent remitting from the amount of the verdict herein the sum of Three thousand ($3,000) Dollars then and in that case the verdict in this action will be set aside and a new trial ordered.

Dated this 1st day of February, 1919.

MITCHELL GILLIAM,
Judge.

Filed in Clerk's Office Feb. 3, 1919.

PERCY F. THOMAS,
Clerk.

By A. N. OLSON,
Deputy.

49 In the Superior Court of the State of Washington for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Consent to Reduction of Verdict.

The court having duly made its order in the above entitled action that the motion of defendant for a new trial herein be denied provided plaintiff shall within ten days from February 1, 1919, make and file his consent in this action remitting of the amount of the verdict in said action, to-wit; Seven thousand One Hundred Seventy five ($7,175) Dollars, the sum of Three Thousand ($3,000) Dollars of said verdict.

Now therefore, be it known that I, the said plaintiff, hereby consent to remit from the amount of said verdict herein the said sum of Three Thousand ($3,000) Dollars and that said verdict be reduced from the sum of Seven Thousand One Hundred seventy five ($7,175) —, so as to stand at and for the sum of Four Thousand One Hundred Seventy five ($4,175) Dollars and no more.

In witness whereof I have hereunto set my hand this 3rd day of February, 1919.

OLE SANDANGER,
Plaintiff.

Filed in Clerk's Office Feb. 3, 1919.

PERCY F. THOMAS,
Clerk.

By A. N. OLSON,
Deputy.

In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Notice of Appeal.

To Ole Sandanger,
Plaintiff in the above-entitled cause, and to
Arctander & Lysons,
His attorneys of record:

You and each of you are hereby notified that the Carlisle Packing Company, a corporation, the defendant above named, hereby appeals to the Supreme Court of the State of Washington from that final judgment in favor of said plaintiff and against said defendant entered in said cause by the Superior Court of King County, Washington, on February 4th, 1919, and from each and every part thereof.
Dated this 6th day of February, 1919.

KERR & McCORD,
HADLEY & HADLEY,
Attorneys for Defendant, Carlisle Packing Company.

Service of the within Notice of Appeal is accepted and receipt of copy admitted this 6th day of February, 1919.

ARCTANDER & LYSONS,
Attorneys for Plaintiff.

Filed in Clerk's Office Feb. 6, 1919.
PERCY F. THOMAS, *Clerk.*
By W. T. HATT, *Deputy.*

In the Superior Court of the State of Washington in and for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, Defendant.

Supersedeas and Cost Bond on Appeal.

Know all men by these presents: That we, Carlisle Packing Company, the defendant above named, as principal, and the American

Surety Company of New York, a corporation organized under the laws of the State of New York, and authorized to transact the business of surety in the State of Washington, as surety, are held and firmly bound unto Ole Sandanger, the plaintiff, above named, in the just and full sum of Nine Thousand and no/100 ths. Dollars ($9,000.00), for which sum, well and truly to be paid, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 6th day of February 1919.

The condition of this obligation is such, that whereas, the above named Ole Sandanger on the 4th day of February, A. D. 1919, in the above entitled action and court, recovered judgment against the Carlisle Packing Company above named for the sum of Four Thousand Three Hundred Twenty five and 10/100 Dollars.

And whereas, the above named principal has heretofore given due and proper notice that they appeal from said decision and judgment of said Superior Court to the Supreme Court of the State of Washington.

Now therefore, if the said principal Carlisle Packing Company shall pay to Ole Sandanger the plaintiff above named, all costs and damages that may be awarded against them on the appeal, or on the dismissal thereof, and shall satisfy and perform the judgment or order appealed from, in case it shall be affirmed, and any judgment or order which the said Supreme Court may render or
52 make, or order to be rendered or made by said Superior Court, then this obligation to be void; otherwise to remain in full force and effect.

Twice the amount of the Judgment and Costs in Trial and $200.00 additional.

CARLISLE PACKING COMPANY,
[SEAL.] By J. G. BROWN,
Vice-Pres.
AMERICAN SURETY COMPANY OF
[SEAL.] NEW YORK,
By S. H. MELROSE,
Resident Vice-President.

Attest:

J. McGILL,
Resident Assistant Secretary.

Filed in Clerk's Office Feb. 6, 1919.

PERCY F. THOMAS,
Clerk,
By W. T. HATT,
Deputy.

In the Superior Court of the State of Washington for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Stipulation Extending Time for Filing and Serving Statement of Facts.

It is hereby stipulated, by and between counsel for the respective parties, that the time within which the defendant may serve and file its proposed statement of facts in this cause may be extended to and including the 10th day of March, 1919.

This stipulation is entered into for the convenience of the court reporter who reported the case.

Dated this 27th day of February, 1919.

ARCTANDER & LYSONS,
Attorneys for Plaintiff.
HADLEY & HADLEY,
KERR & McCORD,
Attorneys for Defendant.

Filed in Clerk's Office Mar. 1, 1919.

PERCY F. THOMAS,
Clerk.
By W. T. HATT,
Deputy.

In the Superior Court of the State of Washington for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Order Extending Time for Filing and Serving Statement of Facts.

Now on this 1st day of March, 1919, came the parties in the above-entitled cause, by their respective counsel, Arctander & Lysons, attorneys for plaintiff, and Hadley & Hadley and Kerr & McCord, attorneys for defendant, and presented a written stipulation between

the parties that the time for filing and serving defendant's proposed statement of facts in this case may be extended to and including the 10th day of March, 1919.

Now Therefore, in consideration of the said stipulation, it is hereby ordered that the time for filing defendant's proposed statement of facts in this case may be and is hereby extended to and including the 10th day of March, 1919.

Done in Open Court the day and date above mentioned.

BOYD J. TALLMAN,
Judge.

Filed in Clerk's Office Mar. 1, 1919.
PERCY F. THOMAS,
Clerk,
By W. T. HATT,
Deputy.

55 In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Acknowledgment of Service of Defendant's Proposed Statement of Facts.

We hereby acknowledge due service of defendant's proposed statement of facts in the above entitled cause, by the delivery to us of a copy thereof after the original was duly filed, this 10th day of March, 1919.

ARCTANDER & LYONS,
Attorneys for Plaintiff.

Filed in Clerk's Office Mar. 14, 1919.
PERCY F. THOMAS,
Clerk,
By W. T. HATT,
Deputy.

56 STATE OF WASHINGTON,
County of King, ss:

I, Percy F. Thomas, County Clerk of King County, and ex-officio Clerk of the Superior Court of the State of Washington, in and for the county of King, do hereby certify that the foregoing is a full, true and correct transcript of so much of the files and record in Cause No. 127,113, Ole Sandager v. Carlisle Packing Company, as I have been directed by appellant to transmit to the Supreme Court on ap-

eal, together with the original statement of facts and exhibits hereto ttached and also the depositions of John Peterson, Iver N. Stens-rud, Nels Hawkinson, Hans D. Sorvick, Chas. Foyston, Nick Loren-en, Jens Foldvik and Dr. W. W. Council.

In testimony whereof, I hereunto set my hand and affixed the seal f the said court this 7th day of May, A. D. 1919.

[SEAL.] PERCY F. THOMAS,
County Clerk.
By W. T. HATT,
Deputy Clerk.

No. 127,113.

OLE SANDANGER, Plaintiff-Respondent,

v.

CARLISLE PACKING COMPANY, Defendant-Appellant.

upplementary Record on Appeal from the Superior Court of the State of Washington in and for the County of King to the Supreme Court of the State of Washington.

In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, Defendant.

Plaintiff's Præcipe for Supplementary Record on Appeal.

Percy F. Thomas, clerk of said court:

You will please take notice that the plaintiff in the above entitled tion, who is the respondent on the appeal therein to the Supreme urt, deeming certain parts of the files and record, which have not en sent up to the supreme court at the behest of the appellant rein, to be material to the review of the matters embraced within e appeal, to-wit; that he deems material to such review the deposi-ns of Isaac Utness and John Jorgenson taken in behalf of plain-f in said action, also the depositions of Andrew Lund, Louis Sten-n, Ingvald Sandanger, and Emanuel Olson also taken in behalf of laintiff in said action and duly on file and of record in said cause this court, hereby requests and demands that your prepare, certify d send up a supplementary record and transcript on appeal em-acing such omitted files and records, to-wit; embracing the original positions of said Isaac Utness and John Jorgenson and further the

original depositions of said Andrew Lund, Louis Stenson, Ingvald Sandanger and Emanuel Olson, and each and all of the same.

And you are further requested to file such supplementary record in the supreme court in and for the State of Washington prior to the hearing of the appeal in said action in said court in order that such supplementary record may be considered by the court as part of the record on appeal, so far as the same may be material to the
59 review of the matters embraced within the appeal.

Dated this 6th day of January, 1920.

Respectfully yours,

ARCTANDER & LYSONS,
Attorneys for Plaintiff and Respondent in the Above-entitled Action.

Filed in Clerk's Office Jan. 6, 1920.
PERCY F. THOMAS,
Clerk.
By A. N. OLSON,
Deputy.

60 OLE SANDANGER,

v.

CARLISLE PACKING COMPANY, a Corporation.

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Depositions.

In the Superior Court of the State of Washington for King County.

No. 127,113.

Ole Sandager, Plaintiff,

v.

Carlisle Packing Company, Defendant.

Stipulation to Take Depositions.

It is hereby stipulated and agreed by and between Arctander & sons, attorneys for plaintiff in the above entitled action, and Had- & Hadley and Kerr & McCord, attorneys for defendant in said ac- that, inasmuch as Emanuel Olson, Louis Stenson, Andrew Lund d Ingvald Sandanger are necessary and material witnesses for plain- in the above entitled action, and inasmuch as all of said witnesses about to depart from the city of Seattle, King County, and will return to King County in time for the trial of said action,

Now, therefore, it is hereby stipulated that the testimony and dep- sions of all of said four parties be taken before Earl E. Richards, Notary Public in and for the State of Washington, residing in ttle, King County, Washington, at the offices of Hadley & Hadley the Colman Bldg. of said city of Seattle on this 30th day of March, 8, at 10 A. M., and,

It is further stipulated and agreed that the testimony of said wit- ses may be taken by said Notary in shorthand and afterwards scribed by him into typewriting, and that the reading of said positions to said witnesses and each of them is hereby expressly ved, and that the parties further waive the signatures of said wit- ses to their depositions and testimony, and,

It is further stipulated and agreed by and between the parties, that and all objections to any questions propounded to said witnesses for any other reason than that of the form of the question, may be interposed at the trial of said action without such ob- jection being noted or entered at the time of the taking of said positions, but that all objections to the form of any and all ques- ns, shall be deemed waived unless noted and entered at the time the taking of said depositions and,

It is further stipulated and agreed by and between said parties, ough their respective attorneys, that said depositions may be read the trial of said action with the same force and effect as if the said tnesses were present and testified in open court as in said deposition forth, unless it shall be made to appear to the court that, at the e of the trial of said action, the reason for taking said depositions d for submitting the evidence of said wi-nesses by said depositions d then ceased,

The parties further waive all formalities and formal defects in the taking or reading of these depositions.

The oath of the Notary Public is waived.

Dated this 30th day of March, 1918.

ARCTANDER & LYSONS,
Attorneys for Plaintiff.
HADLEY & HADLEY,
KERR & McCORD,
Attorneys for Defendant.

63 In the Superior Court of the State of Washington for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, Defendant.

Be it remembered, That on the 30th day of March, 1918, at 10 o'clock a. m., pursuant to the attached stipulation between counsel for plaintiff and defendant, before the undersigned, a Notary Public in and for the State of Washington, appeared John W. Arctander (of Messrs. Arctander & Lysons) counsel for plaintiff, and Mr. C. M. Hadley (of Messrs. Hadley & Hadley) counsel for defendant.

Whereupon the following proceedings were had:

64 ANDREW LUND, produced as a witness on behalf of the plaintiff, having been first duly sworn by the Notary to tell the truth, the whole truth, and nothing but the truth, testified as follows:

(Mr. Arctander:)

Q. Mr. Lund, do you reside in Seattle now?

A. Yes sir.

Q. Do you expect, in the near future, to go away from here, up to Alaska, for the summer?

A. Yes sir.

Q. Do you know the plaintiff, Ole Sandanger?

A. Sir?

Q. Do you know Mr. Sandanger, the plaintiff—Ole Sandanger?

A. Yes sir.

Q. I will ask you whether or not you were in the employ of the defendant, the Carlisle Packing Company, at their cannery near Cordova, Alaska, during the months of February and March, 1917?

A. Yes sir.

Q. When did you start in to work for them up there, what date?

A. Well, we went up in January, wasn't it? I forget the date exactly.

Q. Don't you remember the date you arrived there, about?
A. We left here——
Q. Well, I will waive that. I will ask you to state whether you commenced to work in the first part of February for them?
A. Yes, I commenced to work there.
Q. The first part of February?
A. The first part of February.
Q. Were you working for them the day that plaintiff was hurt, the 7th of March?
A. Yes sir.
Q. At their cannery at Cordova?
A. At the cannery.
Q. What was your business there, what were you employed at?
A. I was employed as gas engineer.
Q. Gas engineer, to run the motor engine?
A. Yes sir.
Q. Were you changed from that work after you got up there?
A. Yes sir, to installing gas engines.

(Mr. Hadley:)

Q. Installing gas engines?
A. Yes.

(Mr. Arctander:)

Q. Installing gas engines in their motor boats.
A. In their motor boats.
Q. And how soon after you got up there were you changed to that work?
A. Right away.
Q. State whether or not, during the months of February and March, both before plaintiff was hurt and after he was hurt, your duties there called you into the oil house on the dock?
A. Yes.
Q. —near the blacksmith shop?
A. Yes sir.
Q. How often would you be in there during that time?
A. I was in there every day.
Q. Every day. And for what purpose did you have to go in there?
A. To go in and get priming oil and cylinder oil.
Q. Priming oil?
A. Or gasoline.
Q. Priming oil, that is gasoline?
A. That is gasoline.
Q. And cylinder oil?
A. Cylinder oil.
Q. For the different boats?
A. Yes.
Q. At the time plaintiff was hurt, and for some time before that,

state what kind of oils were kept in that oil house, and in what kind of containers?

A. There was kept coal oil, gasoline, cylinder oil, and—what do you call the oil for paint?

Mr. Hadley: Turpentine?

A. Well, this oil they use for paint.

(Mr. Aretander:)

Q. The cylinder oil and the oil for paint, what kind of containers were they kept in?

A. They was kept in wooden barrels.

Q. In wooden barrels. The kerosene and the coal oil—no, the gasoline and the coal oil, what kind of containers were they kept in?

A. They were kept in drums, in 110 gallon drums.

Q. 110-gallon drums, made of what, were they of wood?

A. No, that was made out of iron.

Q. Out of iron. How many were there of those 110-gallon drums laying there in the oil house at about the time that he was hurt, before and after he was hurt?

A. There was two—one coal oil and one gasoline.

Q. One coal oil and one gasoline; and were they both of
67 the same size?

A. Both of the same size, both alike.

Q. And where were they as to their lying beside each other or in different parts of the room?

A. They were side by side.

Q. Sitting side by side. What were they sitting on?

A. What were they sitting on?

Q. Yes.

A. They were sitting on what we call a "horse," that is a plank put up to put them on.

Q. Is it also called a bench up there?

A. Yes sir.

Q. And how were they sitting, were they sitting on the end or sitting on the wide part of the drum?

A. They were lying down on the flat.

Q. Laying on the flat part of the drum?

A. Yes.

Q. Not on the end?

A. No.

Mr. Hadley: On the flat part of what?

Mr. Aretander: Flat part of the drum, laying down.

Mr. Hadley: O, on the side.

Mr. Aretander: On the side.

The Witness: On the side, yes.

Mr. Aretander: I suppose that would be the best way—on the side.

(Mr. Aretander:)

Q. I will ask you to state whether or not, during the month of February and up to the time the plaintiff was hurt, the ends of any

these drums—any of the two drums, were painted either red or white?

A. No, they was all alike; they were rusted.

Q. And black as the other side was?

A. Well, there was rust on them. I didn't see no paint on them.

Q. Didn't see any paint. Now, were there any marks or letterings either one of them, showing what kind of oil there was contained them?

A. No, the only thing I could say, the first I came in I had to and pump it and put it in my hand, to tell the difference—the I got any.

Q. You didn't answer my question if there was any lettering or ting, any letters painted or printed on the end of them, or anyre on the drum?

A. No, I didn't see them, no.

Q. What difference, if anything, was there between the two ms?

A. There was no difference.

Q. Except what there was in them, anything on the outside——

A. I didn't see.

Q. —to distinguish one from the other?

A. I could not tell any difference.

Q. You could not tell any difference. How did you find out?

A. I find out—to pump it up and put it in my hand. I can tell difference, by experience, that gasoline is different from kero-; gasoline evaporates.

Q. That is the only way you could tell which container was oline and which was kerosene?

A. Yes sir.

Q. You say you pumped it up?

A. I pumped it up.

Q. From where?

A. From the top. There is a plug there that we screw out.

Q. You say the top. You mean the side that is laying up, that hat you mean, is it?

A. There is a plug in the side of the drum, like the drum laying n here, here is a plug, and there is one in the end, too, but that ews.

Q. In the end?

A. There is one there, but there was no faucet in it.

Q. There was no faucet in that?

A. No.

Q. The way you got your oil out, both to test it and to fill the that you brought in there, was by unscrewing the iron plug in side, on the side laying up——

A. Yes, on the side laying up.

Q. —and putting the pump — it and pumping it up?

A. Yes sir.

Q. And was that the case with both of these containers, those ms?

A. Yes sir.

Q. I will ask you to state whether there were any 50-gallon drums of coal oil in that oil house during either the month of February or March, up until after the plaintiff was hurt?

A. I never saw any.

Q. If there had been any there, would you have seen that?

A. Yes sir.

Q. Was there, up to the time the plaintiff was hurt, any gasoline or distillate kept in there, in the oil house, in 5-gallon cans, two together in a crate or box?

70 A. I never saw any.

Q. Well, was there any before he was hurt, do you know?

A. No sir, not as I seen.

Q. You are sure of that?

A. Not as I saw.

Q. Do you know when they came in there first, when the first ones—with reference to the time that he was hurt, when the first ones of that kind came from the oil house, was it before or after he was hurt? That is what I want to know?

A. This case gasoline?

Q. Yes, case gasoline?

A. I never saw any come there, before or after.

Q. You never saw any come in, either before or after?

A. We built a new gasoline wharf and that came in after the fishermen went on the fishing ground.

Q. When was that?

A. That will be about—the first he went out, he went out in April.

Q. In April?

A. Yes.

Q. And was that the first time you saw any of these two cans in a crate?

A. That is the first time I ever saw them in the crate, yes.

Q. How long have you been engaged in the business of a motor engineer?

A. About fourteen years.

Q. Running an engine?

A. Running gas engines.

Q. During that time, have you had experience of gasoline

71 explosion?

A. Yes sir.

Q. In the cabin where your engine was?

A. Yes sir.

Q. Have you also had experience where fire has taken place outside from an explosion, not caused by an explosion but by the burning of oil——

A. Yes.

Q. —in the cabin. Did you go into the cabin of this boat the day when it came into the cannery, the day that he had been hurt?

A. Yes sir.

Q. After he had been hurt?

A. Right away.

Q. Right away after it came in. Did you look after things there, the engine and other things, the condition of the cabin?
A. It looks like it had been a pretty good sized explosion.
Q. I simply asked you whether you looked around to see.
A. We looked.

Mr. Arctander: We can waive that other thing.

(Mr. Arctander:)

Q. I will ask the question: From your experience, could you state whether or not there had been any explosion of gasoline in that cabin, had there been any explosion of gasoline?
A. Yes sir.
Q. You could tell that from the looks of things?
A. I could tell that, yes.
Q. And what have you to say about it being a big or violent explosion, or otherwise—a great explosion or just only a small affair?
A. Well, it looks like a pretty—I couldn't say exactly no great explosion, but you could see that it had been exploded up all over the ceiling and everything. It isn't like a fire.
Q. It was not like a fire?
A. No.
Q. In working there on the dock, who was your immediate superior, who were you working under?
A. John Peterson, the Port——
Q. The Port Engineer?
A. The Port Engineer.

Cross-examination.

(Mr. Hadley:)

Q. How often have you been in the oil house before this accident?
A. I used to be in every day.
Q. Every day, for how long?
A. O, a short time, just get in and get some gasoline and——
Mr. Arctander: For how long a time?
Mr. Hadley:) For how long a period?
Mr. Arctander: A week or a month, or whatever it was.
A. I don't quite understand.

(Mr. Hadley:)

Q. How many days?
A. How many days? Well, I was in from the day I came up to the time I went down—I came up to the cannery and I worked there until I quit.
Q. Were you in the oil house the day before this accident?
A. Yes, sir.
Q. Do you remember distinctly that you were?
A. Yes.

Q. Do you remember how the drums and cans were on that day?
A. Where the drums was, yes sir.
Q. Are you real sure the gasoline cans were not in the crates at that time, or is that just your impression?
A. Yes sir.
73 Q. Which.
A. There was no gasoline in crates at that time, and I never saw one in there—in oil house.
Q. I thought you said there were some cans of gasoline in April?
A. Not in old oil house, but in the oil wharf, when they built the wharf, so that the gasoline standing outside that came in April.
Q. Did you get any gasoline in the oil house?
A. I got priming oil in the oil house. That is gasoline; that is what we call priming oil, to prime an engine with. We use distillate, you know, and we use gasoline to prime it.
Q. You say you would pump this priming oil out of the top; that is, as it lay on its side, you would pump it out?
A. Yes.
Q. That was the priming oil?
A. That is priming oil.
Q. Did you get coal oil too, did you ever have occasion to get coal oil?
A. No.
Q. So that you did not pump anything out of the coal oil drum?
A. I did, to find out—the first time I came, to find out which one was gasoline.
Q. When was this?
A. I pumped coal oil to find it was coal oil, and then I pumped in gasoline and finding——
Q. When?
A. The first — I came up.
Q. In February?
A. Yes.
74 Q. After that, you always knew which it was?
A. I always knew.
Q. You didn't draw the coal oil from the spigot at the end, then, did you—a faucet?
A. No, from the top.
Q. There was a faucet at the end of the coal oil drum at this time?
A. No, I haven't see- no faucet.
Q. It might not have been when you first drew it, but at the time of this accident?
A. No, there was a pump to pump it out.
Q. And the coal oil drum too?
A. We used one pump. Changed it after I tested it to find out which was gasoline, I just moved the pump over, and that pump was there all the time.
Q. You used the same pump?
A. Yes.
Q. The coal oil drum was painted white at the end?

A. No sir.
Q. What color was it painted?
A. There was no color to it. It was rust, like the other one.

(Mr. Arctander:)

Q. Like what?
A. Rusty.

(Mr. Hadley:)

Q. You could see a white rim around it?
A. I didn't see any.
Q. What size was the coal oil drum?
A. It was about—one of them 110 gallon drums, what they figure they hold.
Q. You say you have run gas engines for fourteen years?
A. Yes sir.
Q. And have had experience in explosions?
A. Yes.
Q. As one who has had such experience, you know that with sufficient heat, under certain circumstances, coal oil will explode, don't you?
A. Yes.
Q. Just a difference of degree of heat, as I understand; gasoline will explode sooner than coal oil will?
A. The gasoline will explode sooner than coal oil, and it will make more explosion.
Q. However, they will both explode?
A. What?
Q. They will both explode though?
A. O, they will both explode. Gasoline will spread more and blast everything to pieces. If you take a can of coal oil, it wouldn't smash to pieces.
Q. Well, if it would explode it would spread, everything that will explode will spread?
A. Well, gasoline will just come right up in a puff and throw it all over. I have had my whole face burned up the same way as him, and I had fire with coal oil and just spread a little, but it would not explode like the gasoline.
Q. Well, that was just a case of a flare-up with the coal oil, wasn't it in your case?
A. Well, I couldn't—I know coal oil wouldn't explode like gasoline.
Q. With sufficient temperature it will explode; that goes, doesn't it? It is just a question of whether it is hot enough, or not?
A. Well, I never saw coal oil explode like gasoline, and I have seen both of them explode.
Q. Yes; they both explode?
A. Yes, both explode; but more or less.
Q. Well, the point is that it explodes, isn't it?

A. What?

Q. The point is that it does explode; you have said that?

A. The coal oil?

Q. Yes.

A. It don't explode like gasoline.

Q. Well, but it does explode, you say, if it is hot enough?

A. The flame up——

Q. If it is hot enough, you, as one experienced in both gasoline and coal oil——

A. Yes.

Q. —know that if there is sufficient heat coal oil also will explode?

A. I don't know if it will or not. I never tried that. I never had no big quantity of it explode, but I have had coal oil caught
77 fire in a gas boat, and it don't throw it up like gasoline. If your gasoline caught fire, you are going to just puff it right up.

Q. Burns faster, that is all?

A. Explode up, but coal oil will just kind of spread it; it don't explode, in coal oil, like gasoline.

Q. Let me get you straight. Does coal oil explode with sufficient heat, or doesn't it?

A. No.

Q. Even with sufficient heat, coal oil does not explode?

A. It will explode, yes, but don't explode like gasoline.

Q. I didn't ask you that. I asked you if it explodes. Is that your opinion as an expert, that with sufficient heat coal oil will not explode.

A. It will explode.

Q. You say you saw the explosion, or you saw the cabin after the explosion?

A. Yes.

Q. When?

A. Right away after she came in.

Q. The same day?

A. The same day.

Q. And the ceiling was burned?

A. Yes.

Q. For that reason, you judge that this was an explosion rather than a flare-up?

A. That was an explosion, yes. You could see that, plain.

Q. Because the ceiling was burned?

A. No, you could see things was scattered all around in there.

78 Q. O, well, things scattered around——

A. You could see it had been exploding, throw it up.

Q. So far as things were scattered around, that could have been caused by any number of confusions in the general excitement; the fact that things were scattered around does not necessarily mean that they were blown around by the explosion, does it?

A. It looked that way. We went and looked at it——

Q. Because you found things scattered around in the cabin, and because the ceiling was burned, you say that there must have been an explosion, is that it?

A. Yes, there must have been an explosion, as far as I see.

Q. You were working under John Peterson, the Port Engineer there?

A. Yes sir.

Q. How could you get access to the oil house, where did you get the key?

A. The key?

Q. Yes.

A. Well, the first we came up, we got the key from John Peterson, and after we left it open.

Q. After that, what?

A. We left the oil house open. Most of the time the oil house was open, anybody could get in.

Q. When was it open?

A. The oil house there——

Q. Well, about when?

A. Well, when first we came up there, a week or two we left it open once in a while, anybody could go in, and if the key wasn't there you could go in the store and get the key.

Q. O, you would go to the store and get it?

A. Yes, go to the store; and John Peterson had the key

Q. You would get it either from Peterson or from the store?

A. Yes.

Q. Did you ever get it from the blacksmith shop?

A. Yes, got it there too.

Q. At the time of the explosion, where would you get the key, do you remember, from the blacksmith shop?

Mr. Aretander: At the time of this accident.

A. Yes, at that time, yes, the key was hanging inside the blacksmith shop.

(Mr. Hadley:)

Q. You would just go in there and get it?

A. Yes. If the door was not open, we went in the blacksmith shop and got the key. Sometimes left it open so that anybody could go in.

Q. Who would leave the door open?

A. Well, I couldn't tell that.

Q. Did you ever leave it open?

A. Not as I remember.

Q. You are not employed by the Carlisle Company now, are you?

A. No, sir.

Q. When was this oil wharf built?

A. Well, it was built about in April sometimes; I can't say exactly the date.

Q. Some time in April?
A. Yes.
Q. And was all the oil kept there after that?
A. Yes, to my knowledge. I didn't went over to the oth
80 place then, to have any occasion to go over there; all the o
I need I could get it over there.
Q. Over where?
A. In the new oil wharf.
Q. In the new oil wharf?
A. Yes.
Q. I say, was all the oil kept at the oil wharf after that, or d
they use the old oil house too?
A. Not as I know.
Q. You didn't have occasion to go to the old oil house after t
new oil wharf was built, you say?
A. O, yes, some time; lots of things I need, I went over there—
white lead and stuff; we had our paints and everything in there.
Q. Were there any drums in the old oil house after the new wha
was built?
A. Well, I could not tell.
Q. You don't remember?
A. No, I don't.

(Witness excused.)

81 LOUIS STENSON, produced as a witness on behalf of plai
tiff having been first duly sworn by the Notary to tell t
truth, the whole truth, and nothing but the truth, testified as follow

(Mr. Arctander:)

Q. You live in Seattle, Mr. Stenson, at the present time?
A. At the present time.
Q. You expect to go to Alaska within a few days?
A. I figure on going out next week, I believe.
Q. And to remain there during the summer?
A. I will be there during the summer, yes.
Q. Do you know Sandanger——
A. Yes sir, I know him.
Q. —the plaintiff. Did you work during the year 1917, for t
defendant, Carlisle Packing Company, at its salmon cannery
near Cordova?
A. Yes.
Q. You knew the last witness who was on the stand, Mr.
A. Mr. Lund, yes.
Q. —Mr. Lund.
A. Yes sir.
Q. Were you working with him when you were working the
A. Yes.
Q. For awhile anyhow?
A. For awhile, yes.

Q. Both of you working under John Peterson, the Port Engineer?
A. Yes.
Q. When did you go up there?
A. 10th of April.
Q. 10th of April 1917?
A. 1917, yes.
Q. Did you have occasion, after you came in there and up to the time that the strike was, the 8th of May, to go into this oil house on the dock, more or less?
A. I didn't quite get that first word.
(Question read.)
A. I was in there several times every day.
Q. Several times every day during that time?
A. During that time, yes.
Q. During that time after you got up there and until you quit working in there, which you did, I guess, after the 8th, didn't you?
A. I quit there when we went out on strike.
Q. Up to that time, from the time you came in there first, what drums, if any, were there in the oil house, containing kerosene or gasoline?
A. There were two drums, just alike.
Q. Just alike?
A. And I believe there was either two or three wooden drums.
Q. They had other stuff in; we don't care about those. But these drums that were just alike, about what size were they?
A. Well, I don't know what size that is, it must be 110 or 120 gallons.
Q. From 110 to 120 gallons, you think?
A. I think, yes; I am not sure.
Q. Where were those two drums lying in the oil house, whether they in their corner or right by each other?
A. They were laying side by side, right where you went in the door.
Q. And do you know what there was in each one of them?
A. I know there was coal oil in one and gasoline in the other.
Q. And, now, what difference was there between those two drums, on the outside?
A. No difference at all.
Q. No difference at all? Was there anything printed on it, or painted on it, or any marks——
A. No.
Q. —showing that it contained one oil or the other?
A. No.
Q. Were the ends of either one of them painted either white or red?
A. No.
Q. What was the appearance of them compared with the ends of the ends compared with the side that were laying up—the side of the drum?
A. The side—the drum was laying flat; the side was up.

Q. I say, what difference was there between the color, of anything, of the ends and on the side laying up, of the drums?
A. I didn't see no difference.
Q. No difference. Did you use to go to get either coal oil or gasoline from those drums, when you were in there?
A. Yes.
Q. How did you find out which one contained kerosene and which one contained gasoline, of those drums?
A. John Peterson was with me the first time.
Q. The Port Engineer?
84 A. The Port Engineer, yes.
Q. And what did he do in order to find out which contained which—which drum contained which oil?
A. He pumped it out and put it on his hand, and his hand was greasy, so he could not find it out; so he put a little on his tongue and then he found out if it was gasoline and coal oil.
Q. Which one contained gasoline and which contained coal oil?
A. Yes.
Q. And told you?
A. And told me.
Q. After that you knew?
A. Yes.
Q. You went to jest the one that he told you?
A. Yes.
Q. Were there any faucets in the ends of either one of these drums there at the time, during the time you were there?
A. Not from the 10th of April until the 9th of May.
Q. Not from the 10th of April until the 9th day of May?
A. The 8th of May, I mean.
Q. No faucets in the ends whatever?
A. No.
Q. There is a place to put a faucet in, in the end, isn't there?
A. Yes.
Q. An iron plug?
A. An iron plug, there, yes, but no faucet.
Q. No faucet. How did you get the oil out from either one of the drums?
85 A. Used one of them old fashioned pumps, pumped it up.
Q. Where did you put the pump in?
A. In the hole—in the top.
Q. On the top, on the side?
A. On the side.
Q. On top?
A. There is a plug there; we put the pump down there.
Q. There was an iron screw that you could unscrew?
A. Unscrew, yes.
Q. And put your pump in?
A. Yes.
Q. How many pumps did you have?
A. I had only one.

Q. Used that for both of the barrels?
A. Both of the barrels, yes.
Q. State whether or not, during this time that you were there, there were any 50-gallon drums of either gasoline or kerosene in the oil house?
A. No.
Q. There was not?
A. No.
Q. State whether or not during that time that you were there, during the month of April and until you quit—whether or not you saw any 5-gallon cans of gasoline, boxed up or crated up, in the oil house?
A. No.
Q. This oil house was right next to the blacksmith shop, was it?
A. Right close to the blacksmith shop.

Cross-examination.

(Mr. Hadley:)

Q. You came to the cannery the 10th of April?
A. Yes.
Q. A month after this accident, which was March 7th; so that of your own knowledge, you know nothing of the conditions on March 7th?
A. No.
Q. You were there until May 8th the day of the strike?
A. Yes.
Q. You were among the strikers?
A. What?
Q. You were one of the striker-?
A. Yes.
Q. And Mr. Lund was one of the strikers, too, wasn't he?
A. No, Lund wasn't one of them.
Q. You are not in the employ of the Carlisle now, are you?
A. No.
Q. How did you distinguish between these two drums afterwards? You remembered which was which, was that it?
A. I just went by what I was told the first time?
Q. What is that?

(Answer read.)

A. Where they was laying.
Q. And the one that you were told was gasoline, you drew gasoline from?
A. Yes.
Q. And the one you were told was coal oil the other way?
A. Yes.
Q. For what did you use the gasoline and coal oil?
A. Each one of the boats had one gallon can of gasoline and one gallon can of coal oil, and all the boats they had on the harbor there I was supposed to fill the cans for him.

(Mr. Arctander:)

Q. You were supposed to fill those cans, you say?
A. Supposed to fill those cans.

(Mr. Arctander:)

Q. You were?
A. I was, yes, with gasoline and coal oil.

(Mr. Hadley:)

Q. For what did they have the gasoline can?
A. For priming oil.
Q. Was that a different kind of can from the coal oil can?
A. Them gallon cans is.
Q. The gallon cans.
A. The gasoline can is painted red and the other can was not painted at all.
Q. The one painted red meant gasoline, did it?
A. Yes.
Q. And it was your duty, from the 10th of April to the 8th of May, to put gasoline in the red cans and coal oil in the other cans, was it?
A. My duty altogether was working with Andrew Lund, and——
Q. That is the reason you went into the oil house, was it?
A. That is the reason I went into the oil house, yes.
Q. I say you used the same pump in both cases?
A. Used the same pump in both cases.
Q. And you are sure that there was no faucet at the end of either drum?
A. There is no faucet that time I was in there.
Q. That is, from the 10th of April on?
A. 10th of April until the 8th of May.
88 Q. Between the 10th of April and the 8th of May, were there any other drums in there besides these two—I mean any other drums than gasoline or kerosene?
A. No.
Q. When was this oil wharf built?

Mr. Arctander: I do not think he testified about the oil wharf.

A. I don't know anything about it.

Mr. Hadley: Well, it is immaterial. Well, that is all.

(Witness excused.)

INGVALD SANDANGER, produced as a witness on behalf of the plaintiff, having been first duly sworn by the notary to tell the truth, the whole truth, and nothing but the truth, testified as follows:

(Mr. Arctander:)

Q. You are the brother of the plaintiff in this case?
A. Yes.
Q. Ole Sandanger. You live here in Seattle, do you?
A. Yes.
Q. You intend to go north to Alaska in a few days?
A. Yes.
Q. And to stay there for the summer?
A. Yes.
Q. State whether or not you worked for the Carlisle Packing Company at their salmon cannery near Cordova, during the season of 1917?
A. Yes, I did.
Q. When did you come there first and commence to work for them, with reference to the time when your brother was hurt, was it before or after?
A. Four days after he was hurt.
Q. Four days after he was burned?
A. Yes.
Q. I will ask you whether or not you know where this oil house is next to the blacksmith shop?
A. Yes sir.
Q. Up on the dock there. How soon after your brother was hurt were you the first time in that oil house?
A. O, I was in there about a couple of days after I came up.
Q. A couple of days after you came up; it would be about six days after he was hurt, then?
A. Yes.
Q. And were you in these more than once, for the next month or so?
A. Yes, I was in there; the door was open sometimes; I was in there with some other fellows several times.
Q. Several times. Now, I will ask you, the first time that you were in there, about six days after your brother was hurt, what if any drums were there there in that oil house, containing gasoline or containing kerosene, if you know?
A. There was laying two about 100-gallon drums.
Q. About 100-gallon drums?
A. Yes.
Q. Laying side by side?
A. Laying side by side.
Q. In the oil house?
A. Yes.
Q. What difference was there between those two drums?
A. There was no difference at all.
Q. No difference at all. Was there any painting on the end of the drums?
A. There was no painting.

Q. No painting of any kind, either red or white?
A. No, nothing.
Q. Nothing. And were there any letters or names or marks printed or painted on either of them, so that you could tell from that which one contained coal oil and which one contained the other?
A. There was nothing to be seen.
Q. Do you know whether or not there was any spout in the end of either one of those drums at that time?
A. There was a plug, but it was not open.
Q. There was a plug?
A. Yes.
Q. An iron plug?
A. Yes.
Q. No spout?
A. No, there was nothing.
Q. Do you know what there was on top of the side as it was laying there, on each of them?
A. There was a hole on top.
Q. Was there anything in the hole?
A. Well, there was a screw, or what you call plug.
Q. A screw plug in the hole?
91 A. A plug, yes.
Q. That you could screw loose; and in what way did you get the oil from either of the cans?
A. We had to pump it up.
Q. From those holes——
A. Yes.
Q. —on the side. How many pumps did you have there?
A. Only one pump, that I saw.
Q. Used for both of the barrels—for both of the drums?
A. Both of the drums.
Q. At the time that you came up there first, was there any 50 gallon drum in that oil house——
A. No.
Q. —iron drum?
A. Those are the only drums, those two.
Q. Those are the only drums?
A. Yes.
Q. What other containers were there in there, in which other stuff was kept?
A. O, there was this grease.
Q. Lubricating oil—is that what you mean?
A. Lubricating oil.
Q. What was that in?
A. Wooden barrels.
Q. Were there any other iron receptacles or iron drums there except these two that you have mentioned?
A. No, those are the only two iron drums.
Q. And was there any difference—did you observe any difference in regard to these drums and in regard to anything in that oil house,

as you have testified to here, afterwards, when you were in
92 there afterwards, from what it was the first time you were in, six days after your brother had been hurt?
A. There was no difference until the time I went out fishing.
Q. Until you went out fishing?
A. Yes.
Q. And what time was that?
A. That was the last part of April. I went out the 10th of April.
Q. You went out the 10th of April?
A. And I came in about three times after that.
Q. During that time, you were in the oil house, too?
A. I was in the oil house.
Q. Was there any change in any matters from what you have testified to here——
A. No.
Q. —from what you found the first time you were there?
A. There was no change.
Q. Did you see any 5-gallon cans crated up, two together in a crate or box, in there——
A. No, sir.
Q. —while you were there, at all?
A. No. I didn't see any.

Cross-examination.

(Mr. Hadley:)

Q. You say you were first in the oil house about six days after the accident.
A. Yes.
Q. What occasion did you have to go in the oil house?
93 A. After coal oil. I was up in the bunk house and made fire in the stove.
Q. You were in to get coal oil for that?
A. Coal oil, yes.
Q. How did you know which drum had the coal oil in?
A. I had to get John Peterson to tell me which one was coal oil.
Q. John Peterson went in with you that first time?
A. Yes.

(Mr. Arctander:)

Q. You mean the Port Engineer?
A. Yes, that is the Port Engineer.

(Mr. Hadley:)

Q. You say you were in there several times afterwards?
A. Yes, sir.
Q. To get coal oil?
A. No, not exactly coal oil every time. I was in there to get paint sometime.

Q. To get paint?
A. Yes.
Q. Was that first time the only time you drew coal oil?
A. No, I drew coal oil when I went out fishing.
Q. When you went out fishing?
A. Yes, the 10th of April.
Q. You knew which drum it was then?
A. Yes. I remembered the drum he told me. It was the same drums laying there.
Q. Well, do you say you used a pump in the coal oil drum, or was there a faucet?
A. There was a pump.

91 Q. Could you say positively whether there were any crated cans of gasoline in there, or do you just not remember whether there were or not?

A. Well, there was no crates of—no other oil in the oil house, that I could see, find, only them two drums.
Q. How large is this oil house?
A. O, I could not tell you that; about 12 x 12, or something like that—14 x 12.
Q. You would have been likely to see whatever there was in it, do you think?
A. I could see if there was anything, yes.
Q. Where did you get the key to get in, from the blacksmith?
A. No, I got the key from the Port Engineer, John Peterson, and I got the key in the store room once.
Q. You don't know, of course, how things stood the day of the accident, or the day before, because you were not there?
A. No, I was not there.

(Witness excused.)

Hearing was continued subject to the call of the Notary.

95 Seattle, Wash.,

April 22, 1918—4 o'clock p. m.

Continuation of hearing, pursuant to the call of the Notary.
Present; Mr. John W. Aretander, attorney for plaintiff, and Mr. E. S. McCord and Mr. C. M. Hadley, attorneys for defendant.

EMANUEL OLSON, produced as a witness on behalf of plaintiff, having been first duly sworn by the notary to tell the truth, the whole truth, and nothing but the truth, testified as follows:

(Mr. Aretander:)

Q. Mr. Olson, where is your home, where do you reside when you are at home?
A. In Seattle.

Q. Are you going away next Wednesday, with the steamer "Alameda" to Alaska?
A. Yes.
Q. Do you expect to be back here at the time of the trial?
A. No, I don't think so.
Q. Were you working for the defendant, the Carlisle Packing Company, in the spring and summer of 1917?
A. I was blacksmith helper.

(Mr. McCord:)

Q. What is that?
A. Blacksmith helper.

(Mr. Arctander:)

Q. Working as blacksmith helper for that company?
A. Yes sir.
Q. At their cannery near Cordova, Alaska?
A. Yes.
Q. Was there more than one blacksmith shop up at the cannery or on the docks there?
A. No.
Q. Where was this blacksmith shop, in which you were working during that spring, located with reference to the oil house?
A. Alongside of the oil house.
Q. Alongside of the oil house. Do you know the plaintiff, Mr. Sandanger?
A. Yes.
Q. Did you know of the fact of his being burned on board of one of the boats of the company in the month of March, 1917?
A. No, I don't know. Well, I heard there was an explosion on the boat.
Q. Yes, and his being burned?
A. Yes.
Q. And you knew of it at the time?
A. Yes.
Q. You heard of it at the time?
A. I knew of it at the time, yes.
Q. Do you remember what date it was?
A. No.
Q. It was not the first part of March, was it?
A. Well, I could not tell.
Q. You could not say that, but you remember the occurrence?
A. Yes.
Q. Now, at that time where were you working—at the time of that occurrence?
A. I was working in the blacksmith shop.
Q. In the blacksmith shop on the dock?
A. Yes.
Q. Next to the oil house?
A. Yes.

Q. How long prior to the time that he was burned had you worked there as a blacksmith helper in that shop?

A. It was a month before he was hurt, and a couple of weeks afterwards.

Q. A couple of weeks after he was hurt?

A. Yes.

Q. There all of that time?

A. Six or seven weeks, or six weeks.

Q. You were engaged in the same business?

A. Yes.

Q. In the same place?

A. Yes.

Q. During the time that you were working there in the blacksmith shop, state whether or not the key to the oil house was kept in the blacksmith shop?

A. No.

Q. Or by their blacksmith, the blacksmith or yourself?

A. No, it was not in the blacksmith shop.

Q. Did you have any use for getting into the oil house during the time you were there?

A. Yes.

Q. Did you have any occasion to get into the oil house?

A. I used to go into the oil house to get a little oil to fire up the blacksmith's—the forge.

Q. The forge fire?

A. Yes.

98 Q. How often would you go in there?

A. I usually would go in there every other day.

Q. Every other day. Where did you have to go for the key to get into the oil house?

A. Had to go to the storeroom.

Q. To the storeroom and ask who for it?

A. I have to ask the storekeeper for it.

Q. Did you at any time during those six weeks that you have mentioned get the key in the blacksmith shop?

Mr. McCord: I object—

A. No.

Mr. McCord (continuing): — to all this as immaterial, irrelevant, incompetent and hearsay, and move to strike all of his testimony up to the present time as incompetent, irrelevant and immaterial.

Q. Do you remember of being in this oil room either one or two days before the day he was hurt?

A. Yes.

Q. On that day, what drums of oil, if any, were there in the oil house?

A. There was two hundred gallons.

Q. Two one-hundred gallon drums?

A. Two one hundred gallon drums, yes.

Q. What did they contain?
A. There was one gasoline and one kerosene.
Q. One gasoline and one kerosene. Were they standing up or ing down?
A. They was lying down on the rack, alongside of each other.
Q. Down side by side?
A. Yes.
Q. And what difference, if any, was there in the two of them on the outside?
A. No difference.
Q. Both just alike?
A. Yes.
Q. What color were the ends painted?
A. There was not no paint on it.
Q. No paint?
A. No paint.
Q. Neither red on one nor white on the other?
A. No; no paint and no marks.
Q. No paint and no marks?
A. No.
Q. No letters or figures indicating whether there was kerosene or hether there was gasoline in either one of them?
A. No marks at all.
Q. When you went in the oil room to get your kerosene, what did ou get it from?
A. I got it from John Peterson.
Q. No, but what did you get the kerosene from, from what con- iner?
A. I got it from a drum.
Q. From one of those two drums?
A. Yes.
Q. And how did you find out which of those two drums—the first me you went in there, how did you find out which of those drums ontained kerosene and which gasoline?
A. I found out by John Peterson, the port engineer.
Q. The port engineer?
A. Yes.
Q. How did you come to find out from him?
A. Well, I was in the blacksmith shop and I asked him for it and e went out and showed me.
Q. He went into this oil room and showed you——
A. Yes sir.
Q. (Continuing:) —which one was kerosene——
A. Yes.
Q. (Continuing:) —and which one gasoline?
A. Yes.
Q. And after that time you knew which one it was?
A. Yes.
Q. As you were coming in from the door, which one was the one ontaining kerosene?
A. To the right.

Q. The one to the right——
A. Yes.
Q. (Continuing:) —of you——
A. Yes.
Q. (Continuing:) —as you came in the door?
A. Yes.
Q. And after that time, did you always get it from the same barrel, the same drum?
A. The same drum.
Q. I will ask you whether or not you at any time prior to his being hurt and for the two or three weeks after he was hurt—the plaintiff—I mean, saw any 50-gallon drums of oil in the oil house?
A. No.
Q. Were there any there during that time?
101 A. No, there was not any fifty-gallons.
Q. During that time and as long as you worked in the blacksmith shop as you have testified to——
A. No.
Q. (Continuing:) —were there any 5-gallon cans of gasoline in crates or boxes, in the oil room?
A. No.
Q. I mean up to the time that he was hurt?
A. No.
Q. Well, now, after the time he was hurt——
A. Yes.
Q. (Continuing:) —was there any there?
A. Yes, there was.
Q. How long after, and how many?
A. Well, there was two a couple of months after.
Q. A couple of months after he was hurt?
A. A couple of months after he was hurt, yes.
Q. Not as long as you worked there, there was not any?
A. No, not as long as I worked there. I was working in the cannery.
Q. How many of that kind did you see in there a couple of months after he was hurt?

(Mr. McCord:) I object to that as immaterial——
Mr. Aretander: I will waive that.
Mr. McCord (continuing): —irrelevant and incompetent.

(Mr. Aretander:)

Q. State whether or not there was any faucet in the end of any of those drums that you state laid side by side there in the oil house?
A. No, there was not any faucet on them.
Q. No faucet screwed on to them at all?
102 A. No.
Q. How did you get the oil out from either one of them?
A. I got it from the top. There is a plug on the top and I took the plug out and took it out with the pump.

Q. Pumped it out?
A. Yes.
Q. This plug was in the belly—that part of the belly of the drum which was laying up?
A. Yes.
Q. And how many pumps did you have there to pump oil up from either one of those barrels?
A. There was only one pump.
Q. Only one pump?
A. Yes.
Q. For both of them?
A. Used for gasoline and kerosene
Q. And kerosene both.

No response.

Cross-examination.

(Mr. McCord:)

Q. How big a room was the oil room?
A. Well, it was about twenty—no, it was about 10x10, I think it is.
Q. 10x10?
A. Yes.
Q. There were only two drums in it when you——
A. There was only two drums.
Q. Only two drums, I say, when you entered the room?
A. Yes, there was some more drums in there, but there
703 was all for machinist—machinist's oil.
Q. What sort of drums were they?
A. There was small wooden barrels.
Q. No other iron drums?
A. No.
Q. Just the two?
A. Just the two drums, yes sir.
Q. One of them was sitting on the right, as you entered there, and the other on the left?
A. Yes.
Q. How far apart were they?
A. Well, they were laying side by side.
Q. On which side of the door?
A. They was laying on the inside of the door there.
Q. I mean in regard to when you entered, was it on the right or on the left?
A. On the right.
Q. What?
A. On the right.
Q. On the right, both of them on the right?
A. Yes, both of them on the right.
Q. I thought you said, just now, one was on the left of the door and the other on the right?

A. No, I didn't say that.
Q. You didn't say that?
A. No. There was one on the right and—both on the right when you came in the door.
Q. How far apart from each other?
A. Just laying side by side.
Q. How far apart? Could you walk between them?
104 A. No.
Q. How did you get around on the other side of the—the furthest from the door, was that up against the wall?
A. It is right up against the wall.
Q. Both against the wall?
A. Yes.
Q. They could not both be against the wall.
A. When you came in the door here, they was laying on the inside of the door, on the right hand side, and it was up against that wall here, see, the ends.
Q. Right opposite the door?
A. Right opposite the door, yes sir.
Q. Right opposite the door?
A. Yes.
Q. Well, then, it was not on the right——
A. Well, it would be on the right hand side when you came in the door here.
Q. Was it up in the corner of this building, or what?
A. On the corner?
Q. I say, were both of the barrels lying in the corner, the right hand corner of the building?
A. On the right hand corner of the building and by the——
Q. And on the opposite side from the door?
A. Yes.
Q. And in the corner on the right side as you entered?
A. Yes.
Q. Opposite the door?
A. Yes.
Q. And one of the barrels was lying right up against the wall, was it?
105 A. Yes.
Q. And the other right next to it?
A. Yes, sir.
Q. How did you use the pump, then, for the inside barrel?
A. Well, just pumped it right up.
Q. Which barrel was next to the wall and which one had the kerosene in it?
A. The kerosene on the right hand and gasoline in the other.
Q. The kerosene was up against the wall?
A. The kerosene was up against the wall, yes.
Q. And the gasoline was on the outside?
A. Yes.
Q. You say those barrels had no spigot on them?
A. No.

Q. They were round drums, were they?
A. Round drums, yes.
Q. 100-gallon drums?
A. Yes.
Q. There were no other drums in there except those two?
A. No.
Q. What did you use the gasoline for?
A. I used it for light up the torch or for——
Q. Did you use gasoline?
A. No, not gasoline; it was kerosene.
Q. You used the kerosene?
A. Yes.
Q. You didn't use the gasoline at all?
A. No.
Q. What was the gasoline being used for at the time?
A. The gasoline, I suppose it was used for gas boats.
Q. The gas boats?
A. Yes.
Q. Was there any other gasoline on the premises except these two ums?
A. No.
Q. I mean anywhere on the premises of the Carlisle Packing mpany?
A. No, not so far as I know.
Q. Well, do you know whether there was any there, or not?
A. No, there was not any in the oil house.
Q. Did they keep the gasoline elsewhere on the premises?
A. Well, they didn't keep any gasoline any other place than in e oil house, when I was there.
Q. You don't know of any other place where gasoline was stored?
A. No.
Q. On these premises?
A. No, not before I—it was a month or two afterwards, we d——
Q. How long did you work for the Carlisle Packing Company?
A. I worked there eight months.
Q. Worked to the end of the season?
A. Yes.
Q. You are not working for them now?
A. No.
Q. You are working for some other company, now, are you?
A. Yes sir.
Q. How did you happen to leave them?
A. Well, I left them up there because a—well, I was sailing, I went sailing after I left the Carlisle Packing Company.
Q. Why did you leave them?
A. Well, I didn't leave them because—I left them because I like get another job.
Q. You didn't get along with them well?
A. Yes sir, I got along very well.

Q. Why did you leave them then, what was the reason, was there any unpleasantness?

A. There was more in the sailing; that is the reason I left them.

Q. You had no unpleasantness at all?

A. No.

Q. How long did you work for them—when did you go up there, rather?

A. In February, I went up.

Q. And you left them eight months afterwards?

A. Yes.

Q. Do you know the superintendent up there?

A. Yes sir.

Q. What is his name?

A. Nels Hawkinson.

Q. Who is the water superintendent—who had charge of the boats?

A. It was John Peterson.

Q. Who else, anybody else?

A. And was a fellow, Captain Murry, they call him.

Q. Where is he?

A. He was the port captain up there.

Q. Where is he now?

A. He is up in Cordova.

108 Q. How did you get this oil out of the barrels?

A. I pumped it out with a pump.

Q. In what, into what?

A. Into the can.

Q. What sort of a can?

A. It was a little tin can. I had to fill up the can with oil and went into the blacksmith shop.

Q. How much oil did it hold?

A. It held about one gallon.

Q. About a gallon?

A. Yes.

Q. Did you fill it up?

A. Yes.

Q. Filled it up each time you went in there?

A. Yes.

Q. How much did you use to start your fire with?

A. Well, I used waste to dip it in the can and then light it with that.

Q. How much did you use a day?

A. Well, I used about—well, we used about a gallon in a day and a half.

Q. Used a gallon in a day and a half?

A. Yes.

Q. To light the fires in the furnace?

A. Yes, and then we had gasoline—or not gasoline, but kerosene to——

Q. I understand that, but I say you used a gallon and a half a day—a gallon a day, then?

A. We used a little for other things, to clean up things and to take dirt off the iron with.

Q. You were in that place then how long, in the blacksmith shop?

A. I was in the blacksmith shop there about two or three months.

Q. And you used about 90 gallons, then, of kerosene in that blacksmith shop during the two or three months, did you?

A. Yes sir.

Q. About 90 gallons?

A. Yes.

Q. Who was the blacksmith?

A. I think it was that.

Q. Who was the blacksmith?

A. He is named Jorgenson.

Q. Where is he?

A. He is over in Lake Washington.

Q. Lake Washington?

A. Yes.

Q. He is not working for the Carlisle Packing Company?

A. No.

Q. Who is he working for, do you know?

A. He is working for—I don't know the name. What is name of at shipyard over there?

Mr. Hadley: Anderson?

A. Anderson, yes.

(Mr. McCord:)

Q. You are on pretty friendly terms with the plaintiff in this case, en't you?

A. No.

Q. A great friend of yours, isn't he?

Mr. Arctander: Sandanger.

A. Sandanger. Well, he is not a very good friend of me because—I know him when I was up there and I am acainted with him up there, was a friend with him up there.

Q. Are you a friend down here?

A. Yes, we are friends down here.

Q. You have talked this matter over with him, have you?

A. No, I haven't talked it over with him.

Q. Talked it over with Mr. Arctander haven't you?

A. No.

Q. Never discussed it at all?

A. No.

Q. Haven't told Mr. Arctander or the plaintiff what you were going to tell?

A. I just told them the story and that is all.

Q. When did you tell them that, just to-day?

A. I just told them to-day—no, it was—two months ago, because

I went up to Alaska, and I didn't have time to come down here, because I went out on the boat.

Q. You discussed with them what you were going to testify to, did you?

A. No, I haven't.

Q. And you didn't tell him what you were going to testify to?

A. Well, I told him the story, and that is all.

Q. Do you know the man that got this oil out the day plaintiff was hurt?

A. The man——

Q. The man that got the oil that was taken on the boat?

A. No, I don't know.

111 Q. You don't know about that?

A. No.

Q. You never saw him draw the oil out?

A. No.

Q. Where did you say the key of this room was kept?

A. It was kept in the store room.

Q. Who was the storekeeper?

A. The storekeeper, I don't know his name.

Q. Is he up there now?

A. No, I don't think he is up there. He was up there this winter, but I don't think—he got a new storekeeper, I think, this year.

Q. A good many of you people working for the Carlisle Packing Company last year didn't go back, did you?

A. There were many of them didn't go back.

Q. A good many of them got dissatisfied, weren't they?

A. They were satisfied, all the men that worked in the cannery.

Q. What?

A. They were satisfied, all the men that was working in the cannery.

Q. I don't understand you.

A. I say, all the men that was working in the cannery was satisfied; they was all satisfied.

Q. Just those in the blacksmith shop that were dissatisfied?

A. Well, they were satisfied, too.

Q. How far was the blacksmith shop from the oil house?

A. Well, they were alongside of each other.

Q. Alongside. Do you know where the Carlisle Packing Company got its gasoline?

112 A. No.

Q. You don't know whether it got it from Cordova or Seattle?

A. No, I don't know.

Q. You say there was no way to distinguish these two barrels, the gasoline from the kerosene?

A. No, I didn't know anything difference on any of them.

Q. But you inquired, when you went in there?

A. Well, I asked John Peterson.

Q. You can tell the difference between gasoline and coal oil when you see it, can you?

A. O, well, I can tell to smell it.
Q. You can tell from the smell?
A. Yes.
Q. And tell from seeing it?
A. Yes.
Q. Everybody knows that, don't they, that knows anything about gasoline and kerosene?
A. Well, I can't hardly tell it by seeing it, but I can tell by smelling it.
Q. You can tell, one is a good deal thicker than the other isn't it, one is clearer?
A. Well, I don't know, I couldn't——
Q. But you can tell from the smell easy enough?
A. Yes, you can tell from the smell.
Q. Anybody can do that?
A. Yes.
Q. You didn't use kerosene—or I mean gasoline to light fires with, did you.
A. No, not gasoline.

Q. Did you see the plaintiff after he was hurt?
A. Yes, I saw him.
Q. When?
A. I saw him two days afterwards.
Q. Did you see him when he came in, the afternoon he was hurt?
A. No.
Q. Saw him two days afterwards, up at the hospital?
A. I was up to the hospital and saw him.
Q. Who are you working for now?
A. I am working for the Alaska steamship.
Q. Joshua Green?
A. Yes.
Q. That is his company, is it?
A. Alaska Steamship Company.
Q. That is, Peabody and Joshua Green run that company, don't they?
A. No.
Q. Who is the head of that company?
A. It is the Guggenheim.
Q. It is a Guggenheim company, is it?
A. Yes.
Q. Who is the manager of it, president of it?
A. It is Pearson.
Q. How long have you been working for them?
A. I have been working there two months now.
Q. In what capacity?
A. I am on the deck, sailor.
Q. Isn't it a fact that the gasoline was kept in hundred gallon drums?

A. Yes, kept in 100-gallon drums, all of it, gasoline——
Q. And the kerosene was in 50-gallon drums, most of it wasn't it?

A. No, it was in 100-gallon drums, both of them.
Q. All the time you were there?
A. No, not all the time. There was a couple of months, afterwards, after I left the blacksmith shop and after he was hurt, there was building up an oil dock, and he had it outside of the cannery then.
Q. That was after the——
A. That was after he was hurt.
Q. That was after he was hurt?
A. Yes.
Q. You say you went into the room to get some gasoline, just a day or two before the plaintiff was hurt, do you?
A. Yes.

Mr. Aretander: He didn't say gasoline.

A. Kerosene.

Mr. Aretander: He said kerosene.

A. Kerosene.

(Mr. McCord:)

Q. Kerosene?
A. Kerosene, yes. I never used gasoline.
Q. You say you went into this room a day or two before he was hurt?
A. Yes.
Q. And at that time you make the statement that there was not any kerosene or gasoline in tin cans in the place?
A. Yes.
Q. There was none?
A. No, there was none.
Q. There was not any on the premises.
115 A. No.
Q. Do you know that positively?
A. Yes.
Q. There was not any gasoline in cans around those premises at all?
A. No.
Q. At that time?
A. Not in the oil house.
Q. What?
A. Not in the oil house and not around the cannery so far as I saw. I never saw any before or after he was hurt.
Q. Now, don't you think that you rather exaggerate the quantity of kerosene you used in the blacksmith shop—a gallon a day?
A. Well, no. I always used the kerosene there for fixing up iron there was rusty and took the rust off the iron.
Q. Was it in an open can that you had it?
A. It was in an open can, yes.
Q. What did you do with it while you were not using it?

A. It was standing in the blacksmith shop.
Q. Whereabouts?
A. Standing right on the bench. We had a little bench in the blacksmith shop.
Q. The top open, all exposed?
A. It was always open, yes.
Q. It was not covered—the can—at all?
A. Never covered that kerosene can at all.
Q. Sparks flying around there everywhere, weren't there?
A. Yes; it would not explode.
Q. You drop a spark into a kerosene can of oil, it would not explode would it?
A. No.
Q. It would not burn?
A. No.
Q. You have seen sparks go right in on the coal oil?
A. I have seen sparks go right into the kerosene and never explode.
Q. And never burn up, either?
A. No.
Q. And you just kept it out there exposed to the sparks and everything else?
A. Yes.
Q. An open can?
A. Open can was standing right on the bench there.
Q. How far from the forge?
A. Well, it was standing there about three or four feet from the forge

Redirect examination

(Mr. Aretander:)

Q. I think there is a misunderstanding here between you and counsel and myself about the position of those drums. Now, was one of them laying alongside of the wall——

Mr. McCord: I object to the question as leading.

Q. (Continuing:) —and then the other on the outside?
A. No.

Mr. McCord: I object to that question as leading. He can tell the condition.

Mr. Aretander: You did not want to mislead either the court or counsel, did you, Mr. McCord?

Mr. McCord: I am not trying to mislead him, but I don't want the words put into his mouth. I want the record to show I object to it.

(Mr. Aretander:)

Q. Let us understand just how those two drums were laying. First, what did you say they were laying on?

A. They was laying on a rack.
Q. On a rack?
A. On a rack, yes sir.
Q. How was the rack running?
A. The rack was—well, here is the oil house here now——
Q. No, that don't go in that record. Just say how it was with reference to the wall—the rack, whether it ran alongside of the wall or away from the wall?
A. It was a little way from the wall, yes.
Q. How was it running, along the wall?
A. No, they was running out from the wall—the rack was, from the inside wall. I could plan it up here.
Q. Yes, you do that; you take a piece of paper and just show how that oil house was and where the rack was and where the door was. (Handing paper to witness.)
A. (Witness draws with pencil.) Here is the door coming in here. (Indicating.)
Q. Well, mark the door, mark the opening there, mark the opening and then write "door."
A. Write "door," yes.
Q. "Door" in the opening.
A. (Witness writing.)
Q. Now, write "d-o-o-r" there. Now, mark that to show
118 where the door is.
A. Yes.
Q. There, and over on this side?
A. Door here.
Q. And crossways there too, now, put the rack where that was.
A. Well, when I came in——
Q. I don't care where you came in. This is the oil house. Put where the rack is.
A. Here comes the rack.
Q. Well, mark that "Rack."
A. (Witness marks.)
Q. No, you want to spell that "R-a-c-k." You have it "R-a-g." Write it "R-a-c-k;" that makes the rack.
A. (Witness writing.)
Q. Let me write that for you.

Mr. Aretander: I guess you don't object to that, do you counsel.
Mr. McCord: I would like for him to place them and not you.
Mr. Aretander: How?
Mr. McCord: I would like for him to draw what there was there.
Mr. Aretander: I will let him draw it.
Mr. McCord: I think he either knows or he don't know. If counsel will not tell him——
Mr. Aretander: You know all there is—he don't know how to spell it.
Mr. McCord: He knows how to draw it.

(Mr. Arctander:)

Q. Just draw it. We will get in the writing afterwards.

Mr. McCord: Take another sheet of paper.
Mr. Hadley: Take another sheet.
Mr. McCord: Let him draw it himself, now, Mr. Arctander.
Mr. Arctander: O, yes.
Mr. McCord: Let him draw it to suit himself.
A. (After drawing.) There is the drums.

Mr. Arctander: Very well. We will ask the reporter or notary to write where he shows the door. You show him where it is there and let him write it, and write where the rack is.
Mr. McCord: Let him put a "D" for the door.
Mr. Arctander: All right, put a "D" then, where the door is.

A. (Witness puts "d" on paper referred to.)
Q. And then put an "R" where the racks is.
A. (Witness marks on paper referred to.)
Q. And put a "d" where each of the drums—inside of each of the drums.
A. (Witness does as requested.)
Q. Now, that gives correctly the idea.
A. That gives correctly the idea.
Q. And on which side, in which one of the drums was the kerosene?
A. Here is the kerosene. (Indicating.)
Q. Well, wait. Indicate the kerosene drum. Will you put a "k" right above where the kerosene drum is?
A. (Witness does as requested.)

Mr. Arctander: All right. That is all. I offer that and ask that it be returned.

Paper referred to was marked plaintiff's exhibit "A," same being attached hereto and returned herewith.

Recross-examination.

(Mr. McCord:)

Q. Why did you say a moment ago that those drums were right up against the wall?
A. I didn't say they up——
Q. You said they were on the right hand side of the door against the wall to the right didn't you?
A. Against that wall here, you see. (Indicating.)
Q. You said it was not possible to get between them, there was no space between them.
A. One right up against the other, right up against each.
Q. Right up against each other. Did the rack extend out beyond this to the right?

A. Yes, right out.

Q. So that there was room to pass in between the wall on the right and the kerosene drum?

A. Yes, there is room—not between the drums here. (Indicating.)

Q. Not between the drums?

A. Not between the drums.

Q. But you could pass between the wall and the drum?

A. You could pass between the wall here, you see.

Q. And this is about ten feet square?

A. Yes.

Q. Wasn't anything else in that room except those two drums?

A. No. Yes, there was oil for machine oil.

Q. Machine oil; that was in barrels?

A. Wooden barrels.

Q. Where were they located?

A. They was laying on the rack, alongside of that.

121 Q. On the left hand side?

A. Yes.

Q. The rack extended clear across the wall opposite the door?

A. Clear across—right across the building.

Q. Right across the wall opposite the door?

A. Yes.

Q. And the pump was taken from one to the other.

A. Yes.

Q. What sort of pump was it?

A. It was a tin pump.

Q. Did you pump the oil out yourself?

A. Yes.

Q. They kept this door locked up there, did they?

A. Sometimes the door was open there.

Q. Sometimes it was open?

A. Yes.

Q. When was it open?

A. Used to be open—well, once in a while they came to get oil there, and they forgot to lock the door there, so that it was standing open, I think, in the day time.

Q. But you had to go and get the key?

A. When I had to get the key I had to go over to the store.

Q. Did you ever find it open when you came to get oil?

A. No.

Q. You always found it locked?

A. Yes.

Q. That was the custom—to keep it locked, was it?

A. Yes.

122 STATE OF WASHINGTON,
County of King, ss:

I, Earl E. Richards, a Notary Public in and for the state of Washington, residing at Seattle in said county, do hereby certify that:

The annexed and foregoing depositions of the witnesses Andrew Lund, Louis Stenson, Ingvald Sandanger and Emanuel Olson, on behalf of the plaintiff, were taken before me and reduced to writing by myself, at Seattle, in said county and state, on the 30th day of March, 1918, and the 22nd day of April, 1918, as therein appears, in pursuance of the annexed stipulation.

That the above named witnesses, before examination, were by me duly sworn to testify the truth, the whole truth and nothing but the truth.

That the reading and signing of said depositions by the witnesses was expressly waived by the respective parties hereto.

That plaintiff's Exhibit "A" hereto attached, is the plaintiff's exhibit "A" referred to in the deposition of the said Emanuel Olson.

In witness whereof, I have hereunto set my hand and affixed my notarial seal, this 1st day of May, 1918.

[SEAL.] (Signed) EARL E. RICHARDS,
Notary Public in and for the State of Washington,
Residing at Seattle, in said State.

Notary fees: $29.00.

123 OLE SANDANGER

v.

CARLISLE PACKING COMPANY.

Depositions of Isaac Utness and John Jorgenson.

124 In the Superior Court of the State of Washington for King County.

No. —.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Stipulation to Take Depositions.

It is hereby stipulated and agreed by and between Arctander & Lysons, attorneys for plaintiff in the above entitled action, and Hadley & Hadley, attorneys for defendant in said action, that, inasmuch as Isaac Utness and John Jorgenson are necessary and material witnesses for plaintiff in the above entitled action and, inasmuch as both of said witnesses are about to depart from the city of Seattle, King county, and will not return to said King county in time for the trial of said action, to-wit: that said witness Isaac Utness has enlisted and is about to go to the front, and said

John Jorgenson is about to depart for the territory of Alaska, a
a member of the crew of a fishing schooner operating in Alaska

Now therefore it is hereby stipulated that the testimony and depositions of both of said witnesses be taken before Earl E. Richards, a notary public in and for the state of Washington, residing at Seattle, King county, Washington, at the office of Hadley & Hadley in the Colman Building in said city of Seattle on this 4th day of February, 1918, at 2 o'clock p. m. and

It is further stipulated and agreed that the testimony of said witnesses may be taken by said notary in shorthand and afterwards reduced by him into longhand, and that the reading of said depositions to said witnesses, and each of them, is hereby expressly waived, and that the parties further waive the signature of each of said witnesses to their said depositions, and,

125 It is further stipulated and agreed by and between the parties that any and all objections to any questions propounded to said witnesses for any other reason than that of the form of the question may be interposed at the trial of said action without such objection being noted or entered at the time of the taking of said depositions, but that all objections to the form of the question shall be deemed waived unless noted and entered at the time of the taking of said depositions, and,

It is further stipulated and agreed by and between said parties, through their respective attorneys, that said depositions may be read at the trial of said action with the same force and effect as if the said witnesses were present and testified in open court as in said depositions set forth, unless it shall be made to appear to the court that at the time of trial of said action the reason for taking said depositions and for submitting the evidence of said witnesses by said depositions has then ceased. The parties further waive all formalities and formal defects in the taking or returning of these depositions, and specially consent and agree that the fact that said action is not yet at issue shall not in any manner affect the validity of taking said depositions.

The oath of the notary public is waived.

Dated this 4th day of February, 1918.

(Signed) ARCTANDER & LYSONS,
Attorneys for Plaintiff.
HADLEY & HADLEY,
Attorneys for Defendant.

26 In the Superior Court of the State of Washington for King County.

No. —.

OLE SANDANGER, Plaintiff.

v.

CARLISLE PACKING CO., a Corporation, Defendant.

Be it remembered, that on the 4th day of February, 1918, at two o'clock p. m. pursuant to attached stipulation between counsel for plaintiff and defendant, before the undersigned, a notary public in and for the state of Washington, appeared Mr. John W. Arctander (of Messrs. Arctander & Lysons), counsel for plaintiff, and Mr. C. M. Hadley (of Messrs. Hadley & Hadley), counsel for defendant;

Whereupon the following proceedings were had:

ISAAC UTNESS, produced as a witness on behalf of plaintiff, having been first duly sworn by the notary to tell the truth, the whole truth, and nothing but the truth, testified as follows:

(Mr. Arctander:)

Q. Where do you live now?
A. In Seattle.
Q. What has been your business for the last five years?
A. Fisherman.
Q. Are you going to leave the city?
A. Yes.
Q. When?
A. The 7th of this month.
Q. The 7th of February. For what purpose?
A. Military service.
Q. You have enlisted?
A. Yes.
Q. In the Aviation Department?
A. Yes sir.
Q. And you are going where, to start with?
A. Well, to Vancouver, Wash., to start with.
Q. And then to the front?
A. Yes, I guess so.
Q. Who did you work for during the summer season of 1916 as fisherman?
A. I was working for Carlisle Packing Company.
Q. At?
A. Cordova, Alaska.
Q. And who did you work for during the season of 1917?
A. For the same company.

Q. At the same place?

128 A. Yes.

Q. When did you commence to work for them during the season of 1917?

A. The 8th of February.

Q. During the season of 1916, what was your main occupation for them as a fisherman, or something else?

A. As a fisherman.

Q. As a fisherman in one of their fishing boats?

A. Yes.

Q. During 1917, what had you been doing up to the time of the accident to plaintiff, most of the time?

A. Well, I was kind of helper, carpenter helper.

Q. Carpenter helper?

A. When they built the plant.

Q. You know the plaintiff, you know Ole Sandager?

A. Yes.

Q. How long have you known him?

A. For three years.

Q. Three years?

A. Just about three years.

Q. Did you know of his being burned on one of the company's boats?

A. Yes.

Q. I mean something burned.

A. Yes.

Q. He was not burned up, of course?

A. No.

Q. But something burned. Do you remember what date that was?

A. That was the 7th of March.

129 Q. And on what boat was he when he sustained these burns?

A. The "C. P. C. No. 2."

Q. That is, Carlisle Packing Company, I guess, No. 2. Was it a boat owned by the Carlisle Packing Co.?

A. Yes sir.

Q. What kind of a boat was it?

A. Well, it was a gasoline motor for the boat.

Q. Of about what size?

A. 28 foot.

Q. About what size, how many tons?

A. Three tons.

Q. About three tons?

A. Yes, about three tons.

Q. State whether or not you were on board that boat the day that plaintiff was there, the day that he got hurt, burned?

A. Yes, I was on the boat that day.

Q. Had you been on that boat the day before?

A. Yes, I was on the boat the day before.

Q. You were on it during all the day on that day?

A. Well——
Q. (Continuing:) From the time it started until it came back?
A. Yes.
Q. How many times had you been on it before that year?
A. I had not been on it before that year.
Q. State when you had been working on boats for the company the year before—or what kind they were?
A. The same kind.
Q. As this No. 2?
A. No. 2.
Q. What crew was there on board the boat the day that plaintiff was hurt?
A. Four men.
Q. Who were they?
A. Iver Stensland, John Jorgenson, Ole Sandanger.
Q. The plaintiff?
A. Yes.
Q. And yourself?
A. Yes.
Q. That is all?
A. That is all.
Q. What position did Iver Stensland occupy on the boat?
A. He was the boss.
Q. Who had charge of the boat?
A. Iver Stensland.
Q. What was the work of the boat that day, what was it sent to do?
A. Well, it was packing sand from Bristol Bay on Egg Island.
Q. That was the day plaintiff was hurt, that you are speaking of now?
A. Yes, that is the day.
Q. What had the boat been doing when you were on it the day before he was hurt?
A. He was to the trap locations, to find out if all the piling was out or was broke out by the ice.
Q. Who was in charge of the boat that day?
A. Iver Stensland.
Q. Was plaintiff on board the boat that day?
A. No.
Q. And was Ole Jorgenson there on that day?
A. John Jorgenson?
Q. John Jorgenson?
A. No, he was not there.
Q. Who were the other two that were there besides you and Stensland, if there were only two more?
A. There was one fellow, I forget his name; I can't remember his name now; he was a fellow from Cordova.

Mr. Hadley: I have the name of the other two: Frank Johnson——

A. Frank Johnson was one of them.

Mr. Hadley: Bert Bullinger and Frank Johnson.

(Mr. Aretander:)

Q. State what kind of boats were used during the whole of the fishing season of 1916, whether they were the same kind of boats as this, or different kinds of boats, as this No. 2?

A. The same kind.

Q. During the season of 1916, what if anything had you had to do, while on board those like boats, in regard to starting fires in the in the stove and cooking the meals, during 1916?

A. Just used boxes——

Q. What had you been doing during 1916 in reference to starting fires, cooking meals or anything?

A. Well, using——

Q. Well, that is not what I wanted to know, but to what extent you had been having anything to do with that during 1916?

A. How much we had to do that?

Q. What?

A. We always—I have had to do that, to building fire and
132 cooking.

Q. Take your turn with the other boys?

A. Yes.

Q. What kind of stoves did they have during 1916, compared with the stove that was on this boat No. 2 at the time of the accident?

A. They had—it was a cheap sheet iron stove.

Q. I ask you how they compared with the stove that they had on the No. 2 at this time, whether it was the same stove?

A. The same kind.

Q. And what was the nature of the stove that you had there on No. 2 at this time?

A. It was a sheet iron stove.

Q. It was a sheet iron stove?

A. Yes.

Q. How was it built with reference to doors or lids or anything?

A. Yes, there was doors and lids on it.

Q. How many doors?

A. One.

Q. Where was that door?

A. It was in the front of it.

Q. On the side of the stove, in front?

A. On the side, yes.

Q. And were there any lids?

A. Yes, there was two.

Q. Two lids on top?

A. Yes.

Q. How thick was this sheet of iron of which the stove was made? Can you compare it with anything that we would know?

133 A. The same kind as the ordinary stove pipe they use, sheet iron stove pipe.

Q. As the ordinary sheet iron stove pipe?

A. Yes.
Q. What was the fuel which was used for these stoves to cook on, during 1916?
A. It was wood.
Q. And what kind of wood or what kind of fuel was used on this boat, the day before the man was hurt, and the day when he was hurt?
A. Wood.
Q. What kind of wood was it the day that he was hurt?
A. Well, it was egg boxes.
Q. Egg boxes?
A. Yes, thin egg boxes.
Q. Broken up?
A. Yes.
Q. In small pieces?
A. Sure.
Q. Now, was that the kind of wood there was used for that stove on the day that plaintiff was hurt?
A. Yes.
Q. State whether or not, either at this time, these two days that you were on board this boat, or at any time during 1916, when you were on similar boats, there was any coal furnished, of any kind, to burn in the stove?
A. No, there was not in 1916.
Q. Was there any at this time, this two days, the day before he was hurt and the day he was hurt, was there any coal——
A. No.
Q. —on board the boat at all?
A. Not a bit.
Q. What was the condition of the wood when you had to use it, either in 1916, as a general thing, or these two days when you were out in 1917?
A. Well, it was wet, because we could not keep it dry.
Q. What?
A. Wet. We could not keep it dry on an open boat.
Q. What place did you have to have the wood in?
A. Outside or in the hold.
Q. You mean on the deck or in the hold?
A. Well, you see, there was no difference, the hold was open, the deck was open; it was an open boat, they call it.
Q. It was an open boat?
A. Yes.
Q. With the fish hole in it?
A. Yes.
Q. And in that hole the wood was kept?
A. Yes.
Q. What was it that caused it to be wet?
A. Well, from the rain and from the splash of the waves.
Q. From the rain and from the splash of the waves?
A. Yes sir.
Q. At these times or summers up there near Cordova, state how often you were in the habit of having rains?

A. Well, mostly every day, I think so.
Q. Mostly every day——
A. Yes.
Q. —it was raining?
135 A. Yes sir.
Q. State whether or not this fish hole you mention, in which the wood was kept—whether or not that was open or closed or anything to close it with?
A. Well, there was some kind of cover they used to put over, but it was not tight. The rain water was forcing through there.
Q. Now, I wish you would state to what extent this wood was raw and wet, as to how its condition, as to being wet or raw, affected the possibility of making fires without any artificial means?
A. Well, it could hardly be done, to make fire with the raw wood, without oil or something.
Q. Without oil or something to start the fire?
A. Yes.
Q. I will ask you what means, if any, was generally used during all of the year 1916, when you were there, while you were working for the company, in regard to starting the fire with the wood that you were furnished?
A. Well, we used——
Q. What did you do usually?
A. Used the coal oil.
Q. Used coal oil?
A. Coal oil.
Q. And how did you use that?
A. We poured coal oil on top of the wood and light a match and drop it in.
Q. And light the match and drop it in?
A. Yes.
Q. Was that the general custom of fishermen working for
136 the company during all that season?
A. Yes sir.
Q. And how long had you been working as a fisherman before that year of 1916, when you started for the defendant?
A. Well, I been working for that company for five years.
Q. For that same company for five years?
A. Five years.
Q. I will ask you to state what has been the general custom up there in Alaska, near the cannery of the defendant, for all those five years in regard to how to light the fires—to light them with coal oil, what has been the custom during all those five years, the general custom?
A. Coal oil was used.
Q. It has been?
A. Yes.
Q. That has been the custom, to use coal oil.
Mr. Hadley: The cannery has been there only two years.
A. Well, I worked for this company down here on Lummi Island, on the Sound here, for three years before, as fisherman.

(Mr. Arctander:)

Q. Was the same custom generally prevailing then when you were at this island down here working for the same company?
A. Yes, the same thing.
Q. Do you remember of any time, any occasion on which a different method was used to make the fire than pouring coal oil on, was there any different way?
A. Well, I sometimes used cotton waste.
Q. That had been used for what?
A. From wiping off the engine?
Q. When you had waste you would use that instead of using the oil, is that it?
A. Yes.
Q. Did you often have the waste?
A. O, sometimes, when we cleaned up the engine, we had waste.
Q. But I ask you if you often had enough waste to make fires with?
A. No, there was not many times we had.
Q. There were not many times?
A. No.
Q. On this particular day, what time, about, did you start out in that boat, the day that he was hurt?
A. About seven o'clock in the morning.
Q. Seven o'clock in the morning?
A. Seven or eight.
Q. Was it after or before breakfast?
A. It was after breakfast.
Q. When, about, did you have lunch that day?
A. At a quarter to twelve.
Q. Who made the fire, who started the fire for cooking the lunch that day?
A. I started it.
Q. You started it?
A. Yes.
Q. And what time, about, did you start the fire?
A. Just about eleven o'clock.
Q. At this time, did you use any oil to start the fire?
A. No, I didn't.
Q. What did you use?
A. Some of the old cotton waste was used.
Q. Some of the old waste?
A. Yes.
Q. That was lying there?
A. Used to clean up the engine.
Q. How much of that did you use up in starting the fire?
A. Used all I had.
Q. Used all there was?
A. Yes.
Q. Nothing left——
A. No.

Q. —for a subsequent fire?
A. No.
Q. State who made the fire the day before on that boat?
A. Stensland was firing.
Q. He started the fire?
A. Yes.
Q. What did he use in starting the fire?
A. He used oil.
Q. What kind of oil?
A. Kerosene, of course
Q. Kerosene oil. That is, kerosene and coal oil is the same thing?
A. Yes.
Q. You mean the same thing. Do you know whether or not when you came in to shore to the cannery that night—I mean the night before plaintiff was hurt—whether or not there was any coal oil left in the can——
A. No.
Q. —that Stensland had used?
139 A. No. There was not any. We got in kind of late that evening. So we didn't have oil enough to light the lantern with, so we went in in the dark.
Q. You got stuck on the mud flat there?
A. Yes, we got stuck on the mud flat. We had to wait until nine o'clock in the evening before we could get off.
Q. And you tried to light your lantern, but found you didn't have any left of the oil in the kerosene can?
A. No, there was no more
Q. No more left. What do you know about there being a particular can that was used for the purpose the year before, and also in the other boats, and left in this boat the two days that you were there, for the purpose of lighting the fire in the stove and for filling the lanterns—a kerosene can, what do you know about that?
A. We had a kerosene can—1-gallon can.
Q. A 1-gallon can?
A. Yes, made for that purpose.

(Mr. Hadley:)

Q. For what purpose?
A. For kerosene, for coal oil.

(Mr. Aretander:)

Q. For what purpose; be used for what?
A. To make fire with and——
Q. Lighting what?
A. Make fire with and fill up the lantern with.
Q. And fill up the lanterns with. Where was that? You say that was a gallon can?

A. It was a gallon can, yes.
Q. And how was it fixed, did it have any spout on it?
A. Yes.
Q. About how thick was the opening of the spout?
A. O, just about—well, you could get a pencil through.
Q. So as to get a pencil through?
A. Yes, just about.
Q. And where, if anywhere, did that kerosene can usually stand, when you were traveling?
A. Used to have it on the bench just in front of the stove.
Q. A bench in front of the stove?
A. Yes.
Q. And what if any marks was there on that can at this time, the first day and the second day, or the day that this injury happened, to the plaintiff and the day before, was the can marked in any way, and, if so, what?
A. It was marked "coal oil" on the can.
Q. "Coal oil?"
A. "Coal oil," yes.
Q. Was it marked "Coal oil" or "Kerosene" do you know?
A. Well, it was—I guess "Coal oil" was the name.
Q. "Coal oil" you think was the lettering on it?
A. Yes.
Q. Had you noticed what time it would take this kind of stoves that you had on board that boat to get cold after the fire went out?
A. Well, about two or three minutes.
Q. Two or three minutes after the fire went out the stove would be cold?
A. Yes.
Q. After you had started the fire for that lunch, did you stay around there and attend to the fire until the lunch was cooked?
A. Yes.
Q. And were you there around the stove until the fire had gone out?
A. Yes.
Q. Who helped to bring the lunch away from the stove and where was it brought?
A. Stensland brought it up on deck.
Q. Up on deck, from the stove?
A. Yes, he wanted to eat it up on deck, you see.
Q. Brought it up in the kettles?
A. Yes.
Q. Now, when he took the kettles away did you notice whether or not there was any more fire burning in the stove?
A. No, it was ashes.
Q. The fire was all out?
A. Yes.
Q. Do you know whether the stove was cold or hot when he took them away?

A. Well, it was kind of hot when he took it away, but it was only ashes in the stove when he took it away, there was not any fire.

Q. There was not any fire?

A. No.

Q. And how was it as to being hot or cold or middling hot or middling cold?

A. Well, it was middling hot.

Q. Middling hot at that time. Did you go up with him then when he brought the meal up?

A. Yes.

Q. Or lunch up?

142 A. Yes.

Q. On deck?

A. Up on deck.

Q. And you took your lunch, all four of you, up on deck, together?

A. Yes.

Q. After you had taken your lunch, what did you do there?

A. Well, we was hunting for ducks along the shore.

Q. You ran the boat along the shore, hunting for ducks?

A. Yes.

Q. And how long a time after you had sit down to your lunch before any fire was started in the stove again?

A. About two hours and a quarter.

Q. Two hours and a quarter?

A. Yes.

Q. Did you hear anything about—any orders given, who should start the fire and for what purpose?

A. Yes, Stensland told Ole Sandanger to go down and make fire.

Q. For what purpose?

A. For cleaning dishes.

Q. For dishwashing?

A. Yes.

Q. And that you say was about two hours and a quarter after you had sit down to lunch?

A. Yes.

Q. From the time you sat down to lunch until the plaintiff, on the order of Stensland, went down to light the fire, state whether or not any of you four had been near the stove?

143 A. No.

Q. When plaintiff was told to go down and light the fire what did he do?

A. Well, he went down.

Q. This stove was in what part of the boat, what do you call it?

A. In the forecastle.

Q. In the what?

A. Forecastle.

Q. In the forecastle?

A. Yes.

Q. You saw him go down there?

A. Yes.

Q. Now, what did you do about the same time?
A. I went down to oil up the engine.
Q. And when the explosion occurred, how far, about, were you away from the stove?
A. About six feet away from the stove.
Q. About six feet away from the stove, down in the same forecastle?
A. Yes, close by the door.
Q. State whether or not you saw the plaintiff put any of the wood into the stove?
A. No, I didn't see him do that.
Q. And what did you see, what is the first that you observed that he was doing?
A. Well, he poured oil in the stove and then he——
Q. From what can did he pour the oil in?
A. From that coal oil can.
Q. That gallon can that you have mentioned here?
144 A. The gallon can, yes.
Q. And how was he holding it when he poured it in, in what hand?
A. He held it this way and just poured it in, and took it in his right hand and grabbed the match with his left hand and dropped it down into the stove, and that is the last I knew.
Q. The last you knew?
A. Yes. It went up.
Q. Did you see anything right after that?
A. Well, it exploded. That is all.
Q. Saw flames?
A. Saw flames, yes.
Q. How far, in your judgment, at the time he dropped the match in there, did he hold the can away from the stove?
A. Just about two feet away from the stove.
Q. Above the stove?
A. No, on the side.
Q. On the side of the stove?
A. Yes.
Q. Did you notice what became of that can, did you see anything just then, what happened to it, or did you afterwards see it?
A. I saw it afterwards.
Q. You didn't see anything just then what became of the can?
A. No, it went too fast.
Q. It went too fast?
A. It went too fast.
Q. What did you see afterwards about the result on the can?
A. The can was all split up, there was no more can. It was
145 one hole on one of the sides, and then the bottom was out.
Q. When he was pouring in this oil could you see whether or not the can at that time was full or nearly empty?
A. It was full.
Q. You could see that from the way he was holding it, pouring it?
A. Yes.

Q. Did you see who brought that can aboard the boat that morning?
A. Yes.
Q. Who was it?
A. Iver Stensland.
Q. The boss?
A. Yes.
Q. The boss of the boat?
A. Yes.
Q. Did you see where he placed it?
A. Yes.
Q. Where did he place it?
A. In the same place where we always used to have it, in front of the stove on the bench.
Q. On the bench in front of the stove?
A. Yes.
Q. And there is where you used to always keep the kerosene can?
A. Yes.
Q. On the other boats that you were on?
A. Yes.
Q. What happened to you when that explosion took place?
A. Well, I went out through the door, the pressure;—
146 Q. Pretty quick?
A. You bet quick.
Q. Did you suffer any burns?
A. Well, I burned my hair. I couldn't eat for a couple of days. Didn't work for three or four days—didn't work; I got burned on the throat.
Q. By inhaling?
A. Yes, inhaling.
Q. What happened to the boat after this explosion?
A. Well, the boat was running full speed and he ran for awhile and the engine stopped.
Q. And what?
A. The engine stopped a little bit afterwards.
Q. Stopped of itself.
A. Yes.
Q. Did the boat take fire? That is what I wanted to know?
A. Well, it was burned all black inside.
Q. Burned all black inside?
A. Yes.
Q. Did you see the plaintiff after the explosion, immediately after the explosion did you see him?
A. Yes.
Q. How was he in regard to——
A. Well, when he came up from the hole the fire was flaming all around him, you see.
Q. The fire was what?
A. It was burning all around his clothes.
Q. In his clothes?
A. Yes.

Q. What was he doing?
147 A. He was hollering for a life preserver.
Q. And did he do anything else except hollering?
A. Yes, he was running around on deck there.
Q. For what purpose?
A. Well, he jumped in the Bay to stop the fire; that is the only way.
Q. To quench the fire in his clothes?
A. Yes.
Q. And did he finally jump in the Bay?
A. Yes.
Q. Were there or were there not any life preservers on board that boat?
A. No, there was not.

Mr. Hadley: I object to that as immaterial.
Mr. Arctander: Well, you know it is the understanding.
Mr. Hadley: All right.

(Mr. Arctander:)

Q. During your experience as a fisherman, how many times do you think that you have started fires on boats—in stoves on board a boat, with the aid of kerosene, by pouring kerosene over it, or seen others do it?
A. Well, hundreds and hundreds of times over again.
Q. Hundreds and hundreds of times?
A. Yes.
Q. I will ask you to state whether you ever saw an explosion caused by the use of kerosene in starting a fire when you have done or when others have done it, during your experi-nce as a fisherman?
A. No, I haven't seen any explosion on a boat.
Q. This time, was there or was there not an explosion?
148 A. There was an explosion.

Cross-examination.

(Mr. Hadley:)

Q. You say you were aboard the boat the day before the accident, also?
A. Yes.
Q. Was that the day before or the second day before, to be accurate?
A. It was the day before.
Q. You are sure it was the day before?
A. Yes, the day before.
Q. That was the only time you had been on board before?
A. Yes.
Q. That year. Stensland was the boss in charge both days?
A. Yes.

Mr. McCord: I object to that, Your Honor, comparing it to something that is not here, as incompetent, irrelevant and immaterial.

The Court: How is that?

Mr. McCord: I object as incompetent, irrelevant and immaterial, comparing it with ordinary camp stoves. Then we have to find out what that is.

The Court: It is for the purpose of describing the situation, that is all.

Mr. McCord: He has already described the size of it and what it was made out of, and given the dimensions.

The Court: I do not know whether that is material or not.

33 Mr. Aretander: I will waive it. It will cost less to let it go.

(Mr. Aretander:)

Q. Were there any doors in the stove?

A. Yes, there were two doors.

Q. Two doors. In what part of the stove were they?

A. They were in the front of the stove.

Q. The front of the stove?

A. Yes sir.

Q. At the outer edge of the bench, the front or outer edge of the bench?

A. Yes.

Q. And was there anything on top of it?

A. Yes, there was two lids on top of it.

Q. Two lids on top?

A. Yes.

Q. And what were they, do you know?

A. They were made out of the same kind of iron; was a little bit heavier.

Q. A little bit heavier?

A. Yes.

Q. When you came down there to make the fire, or start a fire, was there or was there not any heat in the stove?

A. No sir

Q. Was there any fire in the stove?

A. No, there was no fire.

Q. Were there any embers in it?

A. No sir, there was no embers.

Q. What was there in the bottom of it?

A. There was a little bit of ashes.

Q. A little bit of ashes. Now, what did you do about

34 the lids when you came down there first?

A. I took the lids off with my hands.

Q. With your bare hands?

A. Yes sir.

Q What were the lids, with reference to being cold or warm?

A. They was cold.

Q. What degree cold?

A. Yes, they were cold.

Q. How cold?
A. Was cold altogether.
Q. Thoroughly cold?
A. Yes, entirely cold; no heat at all.
Q. Did you take both the lids off?
A. Yes.
Q. After you had taken those off, what did you do?
A. I took my hands down in a fan and shoved the ashes.
Q Shoved the ashes?
A. To one side, so that I could get a little wood in.
Q. Shoved the ashes to one side so as to get the wood in?
A. Yes.
Q. Get room for the wood. What did you do that with—shoving the ashes to one side?
A. I put a little wood in.
Q. I asked you what you did that with. What did you use to shove them aside with?
A. I used my hand.
Q. You used your hands?
A. Yes sir.
Q. Bare hands?
35 A. Yes sir.
Q. Now, what did you find about what there was in that stove when you had your bare hands down there, as to there being any heat in it at all?
A. There was nothing else but a little ashes that I had to shove on the side.
Q. You have told that. Now, I ask you what you found in regard to being any heat?
A. No sir, there was no heat.
Q. No heat at all?
A. No.
Q. Were the ashes or was the sand that was there warm at all?
A. No sir, there was nothing warm at all.
Q. After you had shoved them aside, what did you do?
A. I put the wood in.
Q. Was that raw wood?
A. Yes.
Q. Now, I will ask you whether there was any dry stuff around there at all, for kindling?
A. No sir, I couldn't—there was no dry wood around there at all.
Q. Either chopped or otherwise?
A. No sir.
Q. Either to chop up for kindling, or otherwise?
A. No sir.
Q. What did you have to use, in the condition of that wood, in order to start that fire?

Mr. McCord: I object to that as immaterial, irrelevant and incompetent, and not within the issues.
36 The Court: Objection overruled.

A. I had to use kerosene.

Mr. McCord: I move to strike the answer out for the reason that it is irrelevant, immaterial and incompetent, the charge of negligence not being that it was anything other than that there was gasoline used instead of kerosene, that kerosene was customary and usual to be used. I move to strike out all his testimony tending to show that it was necessary to use kerosene, because that is not the allegation of the complaint, that the use of kerosene was negligence, but that the use of gasoline instead of the *the* kerosene was negligence. It is not within the issues.

The Court: Motion denied.

Mr. McCord: Exception.

The Court: He has answered it.

Mr. Aretander: It was a motion to strike it.

(Mr. Aretander:)

Q. I will ask you to state, if you can, to the jury, what was the general and universal custom among the fishermen up there, at this time and before, and what has it been amongst fishermen generally on this coast and in Alaskan waters, if you know, in regard to using kerosene or coal oil to start a fire with on board the boats as they go to make fire in the stove?

Mr. McCord: Objected to as incompetent, irrelevant and immaterial, because it is pleaded that that was the custom, and admitted in the answer.

The Court: Is that admitted?

Mr. Aretander: No. He don't know what he is talking about.

Mr. McCord: I may not know, but I think that is admitted.

37 Mr. Aretander: It is especially denied that there was any such custom. That is all he knows about it.

The Court: Overrule the objection.

(Mr. Aretander:)

Q. What is the general custom, if you know?

A. The custom is that they use kerosene for to start fire.

Q. Do you know whether or not there was at this time a coal oil or kerosene can standing near the stove for that very purpose?

A. Yes sir.

Q. Did you see the can there?

A. Yes sir, I see the can.

Q. What was the size of the can?

A. A gallon can.

Q. Did you see whether or not there was anything marked or painted or stenciled on that can?

A. Yes sir, that was marked "Coal oil" on the can.

Q. "Coal oil" was marked on the can?

A. Yes sir.

Q. Now, where did that can stand at the time that you came

down there and after you had put your wood in, where did the can stand?

A. She was standing underneath of the bench about——

Q. On the edge of the bench?

A. Underneath.

Q. Underneath the bench?

A. Yes sir, about three to four feet away from the stove.

Q. On what side of the stove?

A. In the front of the stove.

Q. Did it stand right out from the stove or did it stand to
38 one side of the stove?

A. It was standing on the port side in the front of the stove.

Q. When you got down there and stood in front of that stove, where was that can, to your left or to your right?

A. It was to my left.

Q. To your left?

A. Yes.

Q. At this time when you saw this can there, when you were about to use it, I suppose, what thought did you have in regard to what was in the can?

Mr. McCord: I object to that as immaterial, what thought he had. We are not trying it on what he thought.

The Court: Objection sustained.

(Mr. Aretander:)

Q. I will ask you to state whether or not you had any reason at that time to doubt that the can contained what was marked on it, coal oil?

Mr. McCord: Same objection, Your Honor, as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. Yes, I thought it was coal oil.

(Mr. Aretander:)

Q. Did you have any reason to doubt it, I say?

Mr. McCord: I object to that.

A. No sir.

Mr. McCord: I object to that as incompetent, irrelevant and leading.

The Court: It is for the jury to say whether he had any reason to doubt it.

(Mr. Aretander:)

39 Q. Did you have any doubt about it at all the time?

Mr. McCord: I object to it as incompetent, irrelevant and immaterial, a conclusion, and asking the very thing that is to be tried here.

The Court: Objection sustained.

Mr. Aretander: Whether he had any doubt?

The Court: Yes; whether he had any reason to doubt.

Mr. Aretander: No, I waived that. That you said was for the jury. Then I asked him: "Did you have any doubt at all about its containing kerosene?"

The Court: He may testify whether he knew, or not. Whether he had reason to doubt it, or did doubt it, is for the jury to say.

(Mr. Aretander:)

Q. Did you see anybody bring that can aboard the boat and place it where it was—where you found it there that morning?

A. Yes sir.

Q. Who did?

A. Iver Stensland.

Q. That same can?

A. That is the same can.

Q. You saw that?

A. Yes sir.

Q. And Iver Stensland was the captain?

A. He was the captain, yes sir.

Q. Now, when you stood there and were about to light that fire, what did you do in regard to that can?

A. I took the can in my left hand, and put a little oil in the stove on the wood, the same as I used to.

Q. The same amount as you used to?

A. As I used to.

Q. You say you took it with your left hand?

A. Yes sir.

Q. What part of the can did you take hold of with your left hand?

A. I took it with the handle or the bail on the top.

Q. By the handle or bail?

A. Yes.

Q. You took it in your left hand?

A. Yes sir.

Q. And did you use any other means to get the oil out of it?

A. Yes, I tipped her with the right hand.

Q. Tipped the bottom?

A. Yes.

Q. So as to get the oil out. You poured a little oil on what, on the wood or where?

A. Yes sir, on the wood.

Q. In the stove?

A. Yes sir.

Q. And at that time what was the condition of the doors and of the lids, in regard to the doors being open or closed and the lids being over, or not?

A. The lids was off and the door was open.

Q. And the door was open. After you had poured this in, what did you do with the can?

A. I changed it over to my right hand and was holding the can in my right hand and took a match on the shelf just above the stove, and rubbed the match on my pants, and then I was going to drop it in the stove, and the explosion went immediately after I was going to——

41 Q. As you were going to drop it?

A. Yes sir.

Q. Where was the match box with reference to you as you stood there, was that to your left or to your right?

A. It was to my left.

Q. That is why you took your left hand for it?

A. Yes sir.

Q. Do you know whether or not that match ever reached the wood?

A. No, I could not tell, because the explosion went so quick I don't know anything.

Q. Now, when the explosion happened, were you standing with the can in the right hand, was the can in your right hand when it exploded there?

A. Yes, the can exploded to pieces. I was holding it in my right hand.

Q. You were holding it in your right hand when the explosion came?

A. Yes.

Q. And what effect did the explosion have as to the can?

A. Blowed the can to pieces.

Q. Blowed the can to pieces?

A. Yes, there was nothing left of the can.

Q. How far back of the stove, or in front of the stove, rather, did you hold that can at the time?

A. Oh, about twelve inches.

Q. About twelve inches from the front of the stove?

A. Yes.

Q. And how was the can located when you held it in your hand, with reference to the top of the stove?

42 A. The bottom of the can was top edge of the stove, about.

Q. About a foot out?

A. Yes, about a foot out.

Q. And you say that when the explosion came the can exploded too?

A. The can exploded.

Q. The oil in the can?

A. Yes sir.

Q. And did you find anything about the can afterwards, whether or not——

A. The can was in many pieces.

Q. When did you see it?

A. I saw it when I came aboard again after the explosion.
Q. After you had been in the water?
A. Yes sir.
Q. At this time when the explosion happened, came up, when you tried to drop that match, what happened to you?
A. It throwed me right over on the port side, right against the bunk there.
Q. Right against the bunk?
A. Yes.
Q. On the port side?
A. Yes sir.
Q. Threw you against it?
A. Yes.
Q. What threw you?
A. Well, the compressure, the compressure from the explosion.
Q. What did it do to your clothes?
A. It burned all my clothes off.
43 Q. It took some time to burn all your clothes off, didn't it? You mean it started fire in your clothes?
A. Yes, there was fire all over and I was burning all over.
Q. Burning all over. Now, when this explosion happened—do you know whether it was an explosion or whether it was not?
A. It was an explosion.
Q. You are sure of that?
A. Yes, sir; it was a big one, too.
Q. What effect did it have on the boat, just as that came up there with your feeling of the boat?
A. Sure, the boat was shaking. I thought the whole boat went to pieces.
Q. That is what you thought at the time?
A. Yes. I didn't think of anything.
Q. Now, when you were thrown down there towards the—I say, by the pressure of the explosion you were thrown towards the bunk, as I understand you to state?
A. Yes.
Q. Did you for a moment lose your consciousness then?
A. Yes, I lose my consciousness for a few seconds, and I came to again.
Q. And what was the first thing you knew then when you came to?
A. Well, I happened to know which way to get up on deck.
Q. Yes sir. What condition were your clothes in at that time when you came to?
A. I was all in fire.
Q. Your clothing; it was all on fire?
A. Yes.
44 Q. And what did you do then? You knew what was going on?
A. Well, I started to go up on deck.
Q. What did you go up on deck for?

A. Well, it was the only chance—of course, I was burning all over and there was fire all over and that one chance I had.
Q. Was to get out of the fire?
A. Sure.
Q. When you got up on deck, what did you do?
A. Well, I was looking for life preservers, something to hold onto.
Q. Did you stand still and look around to see, or what did you do?
A. Well, I looked on the cabin, I walked from one side to the other of the boat, I looked into cabin where they used to have the life preservers, if there was any. There was no life preservers on board, I couldn't find any. So I had to jump overboard without any.
Q. You did jump in?
A. Yes sir.
Q. You did jump in the bay?
A. Yes sir, I did.
Q. And how were you saved afterwards?
A. Well, I had to swim to the boat.
Q. Getting into the water, the fire was subdued in your clothes?
A. Yes, the fire went out then.
Q. What?
A. Yes, the fire went out when I go to the water.
45 Q. And they threw a plank to you and you swam to the boat?
A. Yes.
Q. After you came in there,—did you go into the cabin or into this forecastle?
A. Yes, I went in there.
Q. Did you look in around there to see whether there was any life preservers?
A. Yes, I looked into bunks. There was no life preservers, was no life preservers.
Q. No life preservers on the boat?
A. No.
Q. You are positive of that?
A. No sir.
Q. Now, at this time when you were a burning torch there and after you had been in the water and come up again, tell the jury whether or not it was connected with any pains or not?
A. Yes, I was paining so much I didn't know how much I was paining. I had to hold my hands up like this to keep the blood down so that—if I held them down like this, you know, it bled so much, I would not have any blood left inside of a few minutes.
Q. You can't tell it, how painful it was to you?
A. No, I can't.
Q. You can't tell?
A. No.
Q. Was there much pain, or not? I don't see why you can't tell what you experienced there. Let us know a little about it.

Mr. McCord: I object to the question as leading, Your
46 Honor.

Mr. Arctander: No, it is scolding.

Mr. McCord: Scolding and everything else. He can tell whether he suffered pain or not, without being led and badgered into it.

The Court: I do not think that is leading. Objection overruled.

(Mr. Arctander:)

Q. Can't you give the jury an idea about what you suffered there at that time?

A. Well, I suffered so much I don't know—I didn't know how much I suffered; I suffered suffering there. Took an hour and a half before I came into—I can't say how much it is.

Q. What?

A. My hands was burned right up here, the skin was all off and the flesh was burned right on top there too. Finger nails was burned down there and the whole face was burned right down to here. You can see the scar.

Q. You can see the scars now, but there was more than what the scar shows now, wasn't there, at that time?

A. Yes; I got burned inside too. Came up with the flames.

Q. Were you burned in one of thighs?

A. Yes, I was burned on my body too.

Q. What part of the body?

A. It was burned on thighs right there.

Q. On the thigh, the outside part of the left thigh?

A. Yes, the left.

Q. How big a burn was that?

A. Oh, about eight inches long.

Q. How wide?

17 A. About four inches, four or five inches.

Q. That has healed, hasn't it?

A. Yes, sir.

Q. Has that bothered you any since?

A. Well, it don't bother me very much, no.

Q. Don't bother you much now?

A. No, that is healed.

Q. I asked you has it bothered you?

A. Yes, it has bothered me for a long while. It is not quite well yet.

Q. Not quite well. Now, the hands you said were all—the skin was burned away?

A. Yes.

Q. And a part of the flesh?

A. Yes, part of the flesh on top of my hands.

Q. Your hair scorched at all—was your hair scorched at all?

A. No. The eyebrows were burned out. I had a big cap on.

Q. Oh, you had a cap on?

A. Yes.

Q. Your hair was saved?

A. Yes, I saved the hair.

Q. Any of your ears particularly injured?

A. Yes, this ear, the left ear.
Q. Especially the left?
A. Yes.
Q. That ear was all right before, was it?
A. Yes.
Q. Had no trouble?
A. Yes, it was all right then.
48 Q. And anything about your mouth and your nose?
A. Yes, the nose is out of shape. It was burned inside. It burned right down my throat.
Q. Right down your throat?
A. Yes.
Q. And burned outside of your mouth?
A. Yes.
Q. You had none of these scars and marks that you have there now, you didn't have any of them before this fire?
A. No, sir.
Q. They all came from that fire?
A. Yes, sir.
Q. Have you at my request made a little plat—a couple of them—showing in a rough way this forecastle of the boat?
A. Sure.
Q. You have made that?
A. Yes.
Q. You have made that at my request?
A. Yes, sir.
Q. It shows it from the horizontal, doesn't it?
A. Yes.
Q. It shows it down from the top?
A. From the top.
Q. From the top down. Shows the whole——
A. The whole——
Q. (Continuing:) —lay of the room there, of the forecastle?
A. Yes.
Q. And the things that are in it are marked there?
A. Yes.
49 Q. What is this in the center?
A. That is the——
Q. That is marked the engine.
A. That is the engine.
Q. What is this mark to the top of the——
A. This is the edge of the boat.
Q. That is the edge of the boat, of course, it represents the boat?
A. Yes.
Q. What is this square mark near the edge there?
A. That is the companion road, the stairway that comes down.
Q. The stairway you go down from the deck?
A. Yes.
Q. That is marked "Hatchway"?
A. Yes, sir.

Q. Now, what is this that goes around on the—— is that the starboard or port side?

A. That is the starboard.

Q. The starboard side. What is that that is marked "Bench" there, what does that represent?

A. That is the bench.

Q. That is the bench that runs right up to the wall?

A. Yes, right up to the side of the boat.

Q. That the stove stood——

A. Yes.

Q. And that runs from the hind part of the forecastle and to the very——

A. The front, yes.

Q. And what is the thing with two holes in it and marked
50 "stove," does that represent the stove?

A. That is the stove.

Q. As it stood there?

A. Yes, sir, that is the stove.

Q. And this little square above the stove, a little to the left, marked "Match," what does that represent?

A. That is the matches.

Q. That is the place for the match safe?

A. That is the box we had with the matches.

Q. What is the round place, marked "Can"?

A. That is the can—where the can was standing.

Q. That is the place where the can was standing at the time when you took it?

A. Yes, sir.

Q. Now, what is on the other side, the port side, what is this mark?

A. Exhaust pipe.

Q. That is the exhaust pipe that you mentioned here?

A. Yes.

Q. That was leaking?

A. Yes.

Q. And what is the square thing over on the port side, what is the long mark there?

A. That is the bunk.

Q. That is the bunk, the lower bunk?

A. The lower bunk.

Q. What is the square mark?

A. That is the five gallon can.

Q. The five gallon can of gasoline that we have mentioned?

A. Yes.

51 Q. That is spoken of here?

A. Yes.

Q. What is that little thing up in the upper corner, what does that represent?

A. That is the rack that was made for the stove to stand on.

Q. The rack made for the stove?

A. Yes.

Q. And the legs under that?
A. Yes.

Mr. Aretander: This is plaintiff's exhibit. We had one before in the depositions.

Sketch above referred to was marked "Plaintiff's Exhibit A for Identification," and another sketch was marked "Plaintiff's Exhibit B for Identification."

Q. Now, showing you plaintiff's exhibit "B," I will ask you whether or not that is another draft that you made, at my request, of the same thing, showing it——
A. On one side.
Q. —from one side?
A. Yes.
Q. And the markings that you have made on that are true and correct?
A. Yes.
Q. And as to about the different places where the different things were that are marked on there?
A. Yes.
Q. Engine and stove and all of it.
A. Engine; here is the hatch stairway comes down.
Q. Yes.
A. And here is the bench, and here is the floor, and there is the can standing.
Q. You mark it "can."
A. Yes, and here is the stove
Q. And the match.
A. And there is the match.
Q. All right. And there is another picture of that rack?
A. Yes.
Q. Which the stove stood on?
A. Yes, that is the rack.
Q. Those are as true and correct as you could make them from memory of how it was?
A. Yes, as well as I can.

Mr. Aretander: I offer them in evidence as a part of the evidence.
The Court: Is there any objection?
Mr. McCord: I object to them unless they are simply offered as explanatory of his testimony.
Mr. Aretander: That is all, I say as part of the testimony.
The Court: They are not drawn according to scale?
Mr. Aretander: No, they are not drawn to scale or anything; it is simply to explain.
The Court: They may be admitted for that purpose.

Sketches above referred to were marked, respectively, "Plaintiff's Exhibits A" and "B."

(Mr. Aretander:)

Q. How long have you been engaged upon the west coast of the United States and up in Alaskan waters, as a fisherman?

53 A. I have been out on this coast about nine years; been seven years in Alaska.

Q. Seven years.
A. Seven years.
Q. You have been a fisherman up there in Alaskan waters?
A. Yes.
Q. And out in such boats as this?
A. Yes.
Q. Where meals were prepared on board the boat?
A. Yes sir.
Q. I will ask you to state whether or not—I don't know whether your former testimony covered that—whether during those eight years it has or has not, according as you know, been the universal and general custom of fishermen in Alaskan waters to use coal oil in starting fires in stoves?

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.

A. Yes sir.

Mr. Aretander: Wait. You forget.
The Court: Objection overruled.

(Mr. Aretander:)

Q. You say you know. Is that the custom, universal custom?
A. Yes.
Q. And has been during all that time?
A. That is the universal custom.
Q. The only way you can get fire?
A. Yes.

Mr. McCord: I object as incompetent, irrelevant and immaterial and leading.

54 Mr. Aretander: That is leading. I will withdraw it.
The Court: Objection sustained.
Mr. Aretander: I know I am wrong.
The Court: The jury will disregard the last question and answer.

(Mr. Aretander:)

Q. I will ask you whether or not you have ever seen a gasoline explosion before, in your experience?
A. No sir.
Q. Before this one?
A. No sir.
Q. How many times have you during that experience you have, that you have mentioned here, the eight years or seven years it was—have you ever seen fires started with coal oil on board boats?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. McCord: I move to strike out the answer to the preceding question where he stated that he had never seen any gasoline explosion, as incompetent, irrelevant and immaterial.

The Court: Motion denied.

(Mr. Aretander:)

Q. How many times, about, do you think you have seen fires started with coal oil during this seven years' experience?

A. Thousands of times.

Q. Thousands of times?

A. Yes sir.

Q. Now, I will ask you whether or not you have ever
55 seen—during any of those thousands of times, whether or not you have ever witnessed any explosion occurring from it?

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled?

A. No sir, I have never seen any explosion.

(Mr. Aretander:)

Q. Anything like what happened here at all?

Mr. McCord: I object as incompetent, irrelevant and immaterial.

The Court: Overruled.

A. No sir.

(Mr. Aretander:)

Q. Have you during that time seen coal oil poured on where there was fire and heat, and no explosion followed?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial. The witness is not shown to be qualified to give an expert opinion.

The Court: I sustain the objection to that. He has already testified that there was not any heat there, so it is not material in this case.

(Mr. Aretander:)

Q. I will ask you whether or not, at any of the times when you have seen coal oil used in starting fires during these seven years that you have mentioned, and when the coal oil was poured in a stove that was cold, whether you have seen even a flare-up from it?

Mr. McCord: Objected to——

A. No sir.

Mr. McCord: —as incompetent, irrelevant and immaterial.
The Court: Objection overruled.

(Mr. Aretander:)

Q. What was the answer.
56 A. No sir.

Mr. McCord: And I object to it and move to strike it out, now, on the ground that it is incompetent, irrelevant and immaterial, upon the ground that the witness is attempting to give expert testimony and has not shown himself to be qualified to testify. As to whether there were other events at other times too remote from this have nothing to do with this case, and I move to strike it out on that ground.
The Court: Motion denied.
Mr. McCord: Exception.

(Mr. Aretander:)

Q. Have you noticed, during your experience on board these boats for the last seven years, what time it generally takes a stove to cool off—a stove like the one used here—I suppose that is what they use generally, isn't it?
A. Yes.
Q. The same stove.

Mr. McCord: I object to that as incompetent, irrelevant and immaterial.
The Court: Objection sustained.
Mr. McCord: And too remote.
Mr. Aretander: I haven't got my question yet. My first question now—I withdraw that.

(Mr. Aretander:)

Q. In your experience, when you have been out fishing, for this last seven years, what kind of stoves have been used, usually, on those fishing boats, as compared with the stove here?

Mr. McCord: I object as incompetent, irrelevant and immaterial.
The Court: Objection sustained.

57 (Mr. Aretander:)

Q. After the fire, what was the condition of the cabin?
A. Everything was——
Q. When you came back again?
A. Everything was smashed up and scattered all over the floor, dishes and all. The cabin was all black inside, and burning.

Mr. McCord: How is that? I didn't catch that.

(Mr. Aretander:)

Q. Was the cabin—before this accident happened, was it painted or not?

A. She was painted gray.

Q. And what was the condition of it in regard to the paint after the fire, when you came in there?

A. The paint was all burned off and was started on the wood.

Q. And what?

A. And started to burn on the wood. The paint was all burned out.

Q. Was it simply darkened, or was it black?

A. Yes, was black.

Q. Black?

A. Yes.

Q. Did you have any means of knowledge besides the explosion which happened there as to what this can—no, first I will ask you, from what you saw and experienced there, what did that can contain, coal oil or anything else?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial, asking for a conclusion of the witness that he is not shown to have any knowledge of or is an expert on the subject.

The Court: Objection overruled.

58 (Mr. Aretander:)

Q. What did it contain?

A. Gasoline.

Q. Gasoline. You are positive of that?

A. Yes.

Mr. McCord: Hold on. I object. I move to strike the answer out, and I object to the question on the ground that it is leading.

The Court: Oh, he has answered. It is not necessary to ask him whether he is positive. The question and answer will be stricken. The jury will disregard the last question and answer.

(Mr. Aretander:)

Q. Was there anything except the fact of the explosion which convinced you in your mind of the contents of that being gasoline?

Mr. McCord: I object to that, Your Honor, as irrelevant, incompetent, immaterial, asking for a conclusion and opinion the witness is not shown to have any qualifications to give.

The Court: Objection overruled.

(Mr. Aretander:)

Q. Was there anything else except the explosion that convinced you.

Mr. McCord: I object to it on the further ground that it does not make any difference what was in his mind at the time as to the cause.

The Court: Well, he may answer this "Yes" or "No" and then he may say what it was.

Mr. Aretander: That is what I want to get at, that it was the smell of gasoline in there. Counsel knows it. I stated it in my opening.

(Mr. Aretander:)

Q. Was there anything else that convinced you about what
59 was in there?

Mr. McCord: Your Honor, what his reasons are seems to me to be wholly immaterial.

The Court: He is asking whether there is anything else. He may state, if there was, what there were. He may answer the question.

A. No sir, there was not anything else.

(Mr. Aretander:)

Q. Nothing else except the explosion?

A. No sir.

Q. Have you reference now to the time when the explosion happened, or have you also reference to the time when you came up from the water?

A. Yes sir.

Q. When you came up from the water, did you notice any smell in the cabin there at all?

A. Yes I—was gasoline smell in the cabin.

Q. Then there was something else, wasn't there?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial and argumentative.

The Court: Well, I sustain the objection to that question.

Mr. McCord: Counsel persists in trying to make an argument after every question.

(Mr. Aretander:)

Q. After you came up from the water and went into that cabin, what did you find in regard to smell?

A. Well, I find there was—been a gasoline explosion.

Q. What did you find as to smell, I say?

Mr. McCord: He has already answered the question that he found a gasoline smell.

Mr. Aretander: Well, can't you let him tell it?

60 Mr. McCord: He has already said that. I object to it as repetition.

The Court: That is all you want to bring out, isn't it?

Mr. Aretander: What?

The Court: That is what he said. That is all you want to bring out, isn't it?

Mr. Aretander: That is all I wanted to bring out.

Mr. McCord: He has brought it out and answered the question several times.

The Court: He has answered that way.

Mr. Aretander: Well, it is not easy for me to find out what this witness answers and what he does not answer because he does it in such a——

The Court: He may answer again.

(Mr. Aretander:)

Q. Now, what did you discover when you came up there, as to smell?

A. I discovered a gasoline smell.

Q. A gasoline smell in this forecastle?

A. Yes sir.

Q. I will ask you to state whether or not you were running around trying to get any life preservers there, whether or not that had any influence in regard to exposing you more to the fire?

A. Yes; if I could find life preservers handy, I could jump overboard right away; so I got more burned because I was looking for life preservers.

Q. How long were you in the hospital up there?

A. About a month.

Q. What time about in the day did you come to the hospital?

A. It was about 7th of March.

61 Q. How?

A. 7th of March I came to the hospital.

Q. I know it was the 7th of March, we are talking about the 7th of March all the time. What time in the day?

A. It was about a quarter after three or about half past three.

Mr. McCord: What hour was that?

Mr. Aretander: A quarter after three or half past three.

(Mr. Aretander:)

Q. What trouble, if any, have you had with your hands since they healed up, since the sores healed up?

A. I have trouble with them all the time. There is paining, weak. I can't do any work with them.

Q. In what way?

A. I can't life anything. When I lift anything, they are so weak I have to sit down. I can't do any work with them as I used to do before.

Q. As you used to do before?

A. Yes sir.

Q. Now, when did that quit, when did you get over it, if ever.

A. I don't know, I don't think I will ever get over it.

Q. You haven't got over it yet?

A. No sir.

Q. Now, about your eyes, what was their condition right after you were injured there, for some time afterwards?

A. Well, they used to pain awful all the time, and I can't see so good as I done before.

Q. But right after the injury, while you were in the hospital, how much could you see?

62 A. When I was right in the hospital, I could not see anything for ten or twelve days.

Q. Ten or twelve days.

A. I couldn't see anything at all.

Q. What was the condition of your eyes during that time?

A. Well, they were awful bad condition.

Q. Do you know whether they were swollen up or not?

A. Well, they were swollen up. The whole head was swollen up, just even with my shoulder; I couldn't see the nose or anything, everything was swelled up, I couldn't see nothing.

Q. Any pains in your eyes?

A. Yes sir, pains awful.

Q. Now, how about those marks that you have got there, as to whether or not they still pain you?

A. Yes, they pain all the time.

Q. Which particular ones?

A. Well, they pain, specially when I usually do any work, pains more——

Q. I mean the scars in the face; they are not affected by your work, are they?

A. No. Well, they are worse when I work, when I get—when blood starts circulation.

Q. When the blood starts circulation?

A. Yes, then they swell up and get bigger.

Q. The scars?

A. Yes, and pain all the time, since all the time I can feel them, all the time there is there. And this side is paining all the time.

Q. The ear on the left side is paining you all the time?

63 A. Yes, and this one is paining me too, but not so bad.

Q. I will ask you whether or not your hands and your face and your sores and scars have particularly ever since that time been sensitive to cold?

A. Yes, when I go out in the cold outside, when it is a cold day, I get cold all over, the hands and face get—face gets yellow and then I go out in the sun, it gets red as blood.

Q. How have your eyes been since the time you were hurt?

A. The eyes have been awful bad.

Q. When did you come down here from Cordova, about what time did you come down?

A. I came down from Cordova about the 18th of July or 20th of July.

Q. And after you came down here, shortly after you came down, did your eyes trouble you so that you had to go to a specialist here?

A. Yes sir.

Q. Who did you go to?
A. I went to Dr. Dowling.
Q. Dr. Dowling?
A. Yes.
Q. In the Cobb Building?
A. In the Cobb Building.
Q. And he examined you?
A. Yes sir, he examined me. Thomas Dowling.
Q. Had you had any trouble with your eyes at all before this time when you were hurt?
A. No sir, I had never had any trouble.
Q. He provided you with the spectacles?
64 A. Yes sir.
Q. What effect have the spectacles had on your eyes, as to helping you, or otherwise?
A. Well, they help a little, but if I don't use them I get*ting* worse—my eyes getting worse.
Q. How is it when using them? Where you haven't used them, can you use your eyes as you used to?
A. No.
Q. If your eyesight is as good?
A. No sir, I can't use my eyes as I used to.
Q. What seems to be the matter with your eyesight now?
A. Well, when I start to read I can't read anything, they start to pain and it pains all the time, and I can't see as good as I done before, especially b ylight, I can't see hardly anything, I can't read at all.
Q. Now, after you first came down here, after the 18th of July, how was your condition?
A. The condition was awful bad.
Q. In what regard?
A. Well, I was burned. My stomach was awful bad inside, and the eyes and everything.
Q. Well, what was it particularly about your internal trouble, what internal troubles did you have?
A. Well, I had trouble in my stomach. My stomach flamed up.
Q. It had got flamed up with fire?
A. Yes sir.
Q. Did you have any trouble with your stomach before——
A. No sir.
Q. —like you did afterwards?
65 A. No sir.
Q. What was the trouble? Can't you tell the jury what was the trouble with your stomach? Can't you tell them what you were suffering? What was the matter with it?
A. Well, the matter—I can't eat anything, I can't eat anything except eggs and milk and a little fish, a little vegetable. I can't eat any meat at all. If I eat any meat, I get sick right away. Sometimes I spit blood, especially in the mornings I spit blood, come from the stomach.

Q. Now, if you do eat anything like meat or anything, what is the result on you, even now?

A. I get sick right after I eat it. I couldn't touch any meat. It comes right up, some of it, and some of it seems to stay right up in the throat, and afterwards I notice lots of times I spit blood if I eat any meat.

Q. What about any pains following when you eat?

A. Yes, pains right across there all the time.

Q. Right across your stomach?

A. Yes.

Q. Affect your heart any?

A. Yes, and pains right inside of my heart—the back of my heart awful pain all the time.

Q. How is it in regard to your being able to eat anything at all when you first came—first had the injury?

A. I was not able to eat anything at all then.

Q. How long a time, about, was it, that you could not eat anything?

A. Oh, it was for two or three months before I could eat any—hardly anything.

66 Q. Just eat enough to keep alive?

A. Just a little to keep alive, that is all, and I got so weak I thought—well, I couldn't stand it any longer.

Q. When you came down here, did you try to go to work?

A. Yes, I tried to go to work.

Q. How long after you came?

A. Oh, about a week after I came down.

Q. And what was the result?

A. Of course, I couldn't stand it. I was so weak, pains in my stomach, got so sick I couldn't do any work, and I couldn't lift anything with my hands, and so I had to quit it.

Q. Had to quit it. Did you see any doctor about it?

A. Yes, I went up to doctor.

Q. Who was the doctor you went to first?

A. I went to Dr. Torland.

Q. In the Cobb Building?

A. Yes, in the Cobb Building.

Q. Now, did you explain to him the troubles that you had, and so forth?

A. Yes, I explained to him.

Q. About your stomach?

A. About my stomach and the condition I was in.

Q. Did he treat you there for a while?

A. Yes, he treat me there for a while, about two weeks, I guess, two or three weeks, and he couldn't do any——

Q. Gave you medicine and so forth?

A. Yes, he gave me medicine.

Q. What did he recommend you to do?

A. Well, he recommended me to go to—he sent me to this

67 specialist.

Q. What is his name?

A. That is Dr. Leede.
Q. Dr. Leede?
A. Leede.
Q. You went to Dr. Leede as he told you to?
A. Yes sir, I went to him.
Q. For how long a time did he attend you?
A. Oh, about——
Q. How many visits?
A. I was there about three times to him. He treat me about ten days.
Q. About ten days. What was the result?
A. I didn't get any better, so I——
Q. You didn't get any better?
A. No, I got worse.
Q. Yes. What did you do then?
A. I went to Dr. Edward Fiek.
Q. Is he another specialist in this town?
A. Yes, he is a stomach specialist.
Q. What did he do with you?
A. Well, he—I told him the condition, and he sent me up to the hospital right away, the same day.
Q. What hospital?
A. It is a sanitarium, on Bellevue Avenue.
Q. On Bellevue Avenue?
A. Yes sir.
Q. And how long did he keep you there?
A. He kept me there for three weeks.
Q. And how often did he attend you during that three
68 weeks?
A. He was in there every day.
Q. What was your hospital bill?
A. My hospital bill was $75.
Q. And you paid it?
A. Yes sir, I paid it.
Q. What was the bill of Dr. Dowling, the eye specialist?
A. That was——
Q. For treating you and for glasses?
A. It was $18.
Q. You paid that?
A. Yes sir.
Q. That is your receipt?
A. Yes sir, that is the receipt. I paid that.
Q. What was the bill of Dr. Leede?
A. That was $17.50.
Q. $17.50. Have you paid that?
A. Yes sir, I have paid that.
Q. Oh, you have paid that?
A. No sir, I haven't paid that.
Q. That is what I thought?
A. No.

Q. Did you pay the bill of Dr. Fick?
A. Yes sir.
Q. For his treatment of you during——
A. Yes sir.
Q. Now, after you came away from the hospital and you went home, state what your condition was?
A. I was just as bad as when I was in the hospital. I was in bed for three months afterwards.
Q. For three months afterwards you were in bed?
69 A. Yes sir.
Q. Did you have to be in bed?
A. Yes sir.
Q. And Dr. Fick treated you during all that time you were home during the three months?
A. Yes sir.
Q. What was his bill?
A. That was $62.50.
Q. And you paid that?
A. Yes sir, I paid that.
Q. And this is the receipt?
A. Yes, that is the receipt for it.
Q. Do you know where Dr. Fick is now?
A. He is over in France.
Q. Did you know before he left, that he was going to leave?
A. No, I didn't know before he left. I knew it about ten days after he left.
Q. Ten days after he left. He is in the military service, in France?
A. Yes, he is in the military service.
Q. How much have you paid Dr. Torland for his attendance?
A. I paid him each time I was up there. I think $25, I guess.
Q. You think it is about $25 you paid him?
A. Yes.
Q. And have you paid out any money during this time for medicine that you had to take, prescribed for you?
A. Yes sir, I have paid out.
Q. About how much?
A. About $30, I guess.

70 Mr. McCord. That is admitted.
Mr. Aretander: That is so. I will withdraw that.

(Mr. Aretander:)

Q. When you were up at Cordova, after you came out of the hospital, were you able to do any work whatever?
A. No sir, I was not able to do any work.
Q. The company——
A. The company——
Q. —put you to doing something?
A. Put me to watch the gate for the cannery there.

Q. Watch the gate?
A. Yes sir.
Q. Which is just to stand there and look?
A. Yes, stand there and look, and I had my bandage still on my hands, they were not more than half healed up, I couldn't hold a fork or knife or anything when I was eating.
Q. What?
A. I say I couldn't eat anything with my hands—anything—because the bandage was on, and I was weak, you know.
Q. That was all you did while you were up there?
A. Yes, that is all.
Q. After you came down here, how long a time after you came down until you commenced to earn anything?
A. Oh, about a year.
Q. About a year?
A. Yes sir.
Q. You commenced to work? When did you first commence to work?
A. Two months and a half, I guess.
71 Q. Two months and a half ago?
A. Yes.
Q. About the 15th of June?
A. Yes.
Q. Where did you then commence to work?
A. I commenced to work down at Nilson & Kelez's shipyard

(Mr. McCord:)

Q. Where?
A. Nilson & Kelez's shipyard.

(Mr. Aretander:)

Q. Nilson & Kelez's shipyard?
A. Yes sir.
Q. And have you kept on working in the shipyard since, with the exception of the time you have been laid up? We will come to that afterwards.
A. Yes, but I have not worked—I worked there for a few days and then I got sick and then I laid off for two weeks.
Q. For two weeks, after you had started in?
A. Yes. Then I went to work and pretty near every week I had to lay off.
Q. How many times, how many days did you lay off at a time when you had to lay off?
A. Oh, I guess it must be about a month.
Q. A month altogether that you laid off?
A. Yes sir.
Q. During those two months and a half since you started to work?
A. Yes.
Q. How?
A. Yes sir, about that.

Q. Now, when you laid off this time was because you
72 haven't wanted to work, or why?

A. No, it is because I am sick, I can't work.

Q. You could not work?

A. Yes.

Q. And when you took work there, what work did you get?

A. Well, I got the work, I am helping around the band saw, where they saw the frames for the boats.

Q. Why didn't you get any better work?

A. Because I can't stand it. You see that is kind of easy work.

Q. Kind of easy work and easy pay, I suppose?

A. Yes, small pay, smallest pay there is in the yard.

Q. How much?

A. $4 a day.

Q. Have you had any trouble with nervousness since you were hurt? No. I will waive that question. So that there is about twelve months since you came down from Alaska that you haven't been able to earn a penny?

A. Yes sir.

Q. On account of this trouble?

A. Yes sir.

Q. Up to the present time?

A. Yes sir.

Q. Now, did the company pay you something for the time that you were there and until you left?

A. Yes, they paid me. I got $250 in a check up there, before I left.

Q. Yes. And you had got some money up there before, hadn't you?

A. I got about $30.

73 Q. Then it is $280 they paid you up there?

A. Yes sir.

Q. And after you came down and while you were sick, did your wife get some more money from them?

A. Yes sir, when I was——

Q. On account of your wages?

A. Yes, when I was laying up at the hospital my wife was down to get the rest of it and she got $125.

Q. So that the company paid you, altogether, $405 for wages from the 7th of February?

A. Yes.

Q. Up until the time you quit?

A. Yes sir.

Q. They paid your hospital and doctor bills up in Cordova?

A. Yes sir, they did.

Q. But they haven't paid any of your other doctor bills?

A. No sir.

Q. Or any other wages?

A. No, no.

Q. Except what you have mentioned.

(An adjournment was here taken until 9:30 o'clock tomorrow morning.)

71 *Proceedings of September 5, 1918.*

OLE SANDANGER, the plaintiff, resumed the stand.

(Mr. Arctander:)

Q. What was the position of the stove with reference to the wall, as to whether any part of it came close up to the wall of the boat?
A. Yes, the bottom, the lower part of the stove was close up to the wall, and the upper was a few inches away from the wall.
Q. The wall receded?
A. The wall was going down like this.
Q. On the wall back of the stove what was there?
A. There was a tin plate put on the back of the stove on the wall.
Q. Nailed down?
A. Nailed onto the wall.
Q. When I offered this last night, you hadn't marked on "A" the word "Bunk" where you said the bunk was. You have done that since, have you?
A. Yes.
Q. And that represents it correctly?
A. Yes.
Q. I forgot to ask you, also, last night, about whether or not you had noticed any difference since that accident in regard to the condition of your nerves?
A. Yes sir, I have been nervous all after that explosion and I am nervous yet, and I can feel it——
Q. How does that exhibit itself?
A. Well, I shake, and when I work a little I shake awful bad.
Q. Your whole body shakes?
A. My whole body shakes, and even when I am laying in the bed I am shaking, and start and sweat sometimes too.
Q. Do you know anything about the actions of your heart since that time when you are nervous?
A. Yes sir, the heart sick; sometimes, if I much work it starts to beat, I have to sit down for five or ten minutes, and it don't seem to work right. Lots of times when I am laying in the bed it starts to beat, too.
Q. I will ask you whether or not there was any fire at all in that stove during that morning until luncheon was prepared there?
A. No sir, there was no fire.
Q. No fire at all in the stove?
A. No fire at all.
Q. How long a time, approximately, did it take to prepare the lunch, from the time the fire was started until the lunch was removed upstairs?
A. From fifteen to twenty minutes, not over twenty minutes.

Q. Not over twenty minutes. Now, what amount was there of ashes, sand and gravel in the bottom of the stove at the time you came to make the fire?

A. Well——

Q. As near as you can tell?

A. About inch and a half, probably two inches, but not over.

Q. You are sure not over two inches?

A. Yes, not over, because I was right down in the bottom with my hand.

Q. With your hand you got right down to the bottom of
76 the stove?

A. Yes.

Q. And the two inches would cover everything, ashes, sand and gravel, or everything that was in the bottom?

A. Yes sir.

Q. I wish, while it is a little lighter than it was yesterday, that you would step up here before the jury and show them your scars on your face, your hands, the way your hands are.

A. (Witness showing.)

Q. Show the jury your nose.

A. (Witness showing.) I haven't any feeling in my nose, either.

Q. You haven't any feeling. Where is it, on the left ear?

A. The left ear. (Showing.)

Q. The front of the ear?

A. Yes.

Q. No scars left on the other ear, on the right ear?

A. No. (Showing.)

The Court: Speak a little louder so that the stenographer can get what you say. The stenographer should take down what you say to the jury.

A. The skin was all off and the meat was burned off, right down on the bottom, right where it is flame; meat was burned out all over, and there was only a little skin here left, there was a little bit of skin left inside, in the palm. The finger nail was burned off all around.

Q. You told them that. Only wanted them to see it. You have told the jury the condition of your face and ears—your scars.
77 A. (Witness showing to the jury.)

Q. Now, take the stand. You spoke yesterday of—I asked you whether a certain receipt which I showed was the receipt from Dr. Dowling, the oculist. I have had it marked plaintiff's exhibit "C" for identification. Is that the receipt? (Handing paper to witness.)

A. Yes sir, that is the receipt.

Q. From Dr. Dowling?

A. Yes.

Q. And showing you exhibit "D," receipt from Dr. Fick, is that the one that I showed you that you said was the receipt that you paid Dr. Fick?

A. Yes sir, that is the one.

Q. You paid both of those doctors the amounts stated in those receipts?
A. Yes sir.

Mr. Arctander: Is there any objection to the offer of them?
Mr. McCord: Not at all.
Mr. Arctander: We will offer them in evidence.
The Court: Admitted.

Receipts referred to were marked, respectively, Plaintiff's Exhibits "C" and "D."

(Mr. Arctander:)

Q. You said the hospital you paid $75?
A. Yes, I paid $75.
Q. Have you that receipt?
A. No, I lost the receipt.
Q. You lost the receipt?
A. Yes sir, I lost it.

Mr. McCord: Who was that to, the other seventy-five?
Mr. Arctander: The hospital.

(Mr. Arctander:)

Q. Where did you state that the hospital was?
A. It is on Boylston Avenue.
Q. Boylston Avenue?
A. Yes.
Q. You stated Boylston and you stated Bellevue.
A. I stated Bellevue, but I was mistaken; it was Boylston.
Q. A private sanitarium up there?
A. Yes, it is a sanitarium, private house.
Q. Do you know whether it is there now?
A. Yes, it is there now, but there has another lady got it now.
Q. Another lady is running it?
A. Yes.
Q. You paid that bill, anyhow, $75?
A. Yes, I paid it.

Cross-examination.

(Mr. McCord:)

Q. Mr. Sandanger, how long have you been engaged in the fishing business, did you say, in Alaska?
A. About seven years.
Q. Before you were injured. And you knew how to operate boats, did you?
A. Yes.
Q. And been working on tugs and small launches that were engaged in the fishing business, for the whole seven years, have you?
A. Yes sir.

79 Q. You knew how to operate the engines, didn't you, run the boat?

A. Oh, yes, I know how to operate them.

Q. You are an experienced fisherman and steamboat man for boats of that size, are you?

A. Yes.

Q. And during all of the time that you had been in Alaska, you say it was the custom for you to start your fires with kerosene oil?

A. Yes sir.

Q. On all boats?

A. On all the fishing boats.

Q. Whether operated by you or anybody else?

A. Yes.

Q. That is the universal custom, you say, throughout Alaska, is it?

A. Yes sir.

Q. Now, you knew at the time that it was contrary to the regulations of the government to use kerosene in starting the fire, didn't you?

A. I don't know anything about that.

Q. You don't know anything about that?

A. No sir.

Q. You knew that if you had dry wood you could have started it, couldn't you?

A. Yes, I could if I could have dry wood.

Q. On the morning in question when you were injured, if these egg boxes were dry you could have taken the hatchet and split them up and started it without using the kerosene, couldn't you?

80 A. Yes, if they was dry, but they wasn't dry.

Q. These egg boxes are all kiln dried lumber, are they not originally, before they are made, they are run through the dry kiln?

A. Yes, but they lay outside there when it comes in the cannery.

Q. Those are not green lumber, I mean?

A. It is thin.

Q. What?

A. That is thin boxes.

Q. I understand that, but it is wood?

A. That is wood, yes.

Q. I say the wood was all kiln dried, wasn't it?

A. No, it was not dry we had aboard the boat.

Q. I understand it was wet, but I mean it had no sap in it, it was not green wood at all?

A. Well, it was all wet. I don't know what kind of wood it was.

Q. I say it was kiln dried lumber. Have you ever started any fires without kerosene? I believe you said you hadn't?

A. No, I always used kerosene.

Q. Always?

A. Because we were going in fishing boat and you can't keep wood dry.

Q. As a matter of fact, you use it because it is so much quicker, don't you?

A. Yes, that is the only way you can start fire.

Q. And whether it was dry or whether it was not, you would still use kerosene, because it was more convenient, just as you do in your own home, naturally, wouldn't you?
A. Yes, I——

(Mr. Aretander:)

Q. Whether it was dry or not?
A. No, if it was dry——

Mr. Aretander: Pay attention to what he asks you.
Mr. McCord: I would be very much obliged if you would keep quiet.
Mr. Aretander: Is that so? Well, I am not going to let you get an advantage——
Mr. McCord: While I am interrogating the witness, I would like for you to keep quiet.

Q. When you set out on the morning of this accident, I want you to tell me where you went to?
A. We went out Buswell Bay.
Q. How far is Buswell Bay from this Cordova cannery?
A. Oh, I don't know exactly how far, but it must be about close to about twenty miles anyhow.
Q. About twenty miles?
A. I guess so.
Q. And you left at eight o'clock in the morning?
A. Left 7 o'clock in the morning.
Q. And you went to Buswell Bay and took on a load of sand, did you?
A. Yes, took forty sacks of sand, or half sacks.
Q. You took on a load of sand at the entrance of the Bay, didn't you?
A. Yes.

Q. And after reaching Buswell Bay, before taking on the sand you went up inside of the Bay a distance of a mile or two further, didn't you?

A. No, sir, we didn't.
Q. You didn't do that?
A. No.
Q. Where were you, or at what point were you when you had lunch, do you know?
A. I don't know exactly the name of the points, but——
Q. You don't know the name of the point. Now, where did you go off on this duck-shooting expedition?
A. We were about twelve miles from the mouth of the Bay.
Q. The mouth of the Bay, Buswell Bay?
A. You mean when we had the lunch——
Q. I say, when you went out to shoot these ducks—you say you started to shoot ducks for an hour and a half or two hours?
A. Yes, it was——
Q. Where were you when you did that?

A. Well, it was running along the beach there.
Q. What beach, on what island?
A. That is on Hawkins Island.
Q. On what?
A. The Bay is on Hawkins—on Hinchinbrook Island.
Q. That is where you were shooting ducks?
A. No, but the bay is there.
Q. I am asking you where you were shooting the ducks, where were you when you spent these two hours shooting ducks?
A. We were running along Hawkins Island, I guess.
Q. Did you go out of your course——
A. I don't know as that is the name of that.

83 Q. Did you go out of your regular course from Burroughs Bay to Cordova, in order to shoot these ducks?
A. Yes, we ran along the beach——
Q. You went where, Burroughs Bay? That is the place you went, wasn't it? What is the name of that Bay, give it again?
A. Buswell Bay.
Q. Buswell Bay. Now, between Buswell Bay and Cordova it was practically a straight course, was it not?
A. No, sir, it is not a straight course.
Q. Where did you go out of the course, in order to shoot these ducks?
A. Well, we ran along the beach.
Q. What beach?
A. Along the—along shore.
Q. You know whether it was out of your regular course, or wasn't I say, was it out of your regular course, or was it on your course?
A. Yes, it was out of the course.
Q. You went out of your course. You went off in which direction from the regular course, north or south, east or west?
A. Well, I didn't look on the compass.
Q. Well, how far was it?
A. I guess it would be about two points off the course anyhow, two or three points.
Q. How far off of your course?

(Mr. Aretander:)

Q. About what, what did you say?
(Answer read.)

(Mr. McCord:)

Q. How many miles away from your regular course did
84 you go?
A. Well, we go about ten or twelve miles.
Q. Ten or twelve miles off of your course to do this shooting?
A. From the time we left the bay.
Q. From your regular course, you diverged off ten or twelve miles from your regular course, is that it? Look at me now, not at your counsel.

A. Yes, I guess. I didn't look on the compass.

Q. You think it was about ten or twelve miles?

A. Well, maybe on the straight from the bay. We maybe was on the course for a little while, but——

Q. But you were off of your course and wasted about two or three hours—an hour and a half or two hours, in this duck shooting, did you?

A. Yes sir, an hour and a half or two hours.

Q. Now, this boat that you speak of, that you were on on that day, could run about six miles an hour, couldn't it?

A. Yes, about six miles an hour.

Q. That would be about the maximum speed, would it not?

A. Yes, think so; from five to six miles.

Q. This boat—the deck of the boat was only about six inches above the water, wasn't it?

A. Oh, it was more than that.

Q. How much above the water?

A. It was about two feet above.

Q. About two feet above the water?

A. Two feet and a half above the water.

Q. How deep was the boat, then, down to the bottom of the boat, down to the bottom——

85 A. I could stand straight—when I was in the cabin, I could stand straight in the cabin.

Q. The cabin, a part of it was down and then a house built on the deck; about six feet in the cabin, wasn't it?

A. The cabin?

Q. Yes, from the top of the cabin to the bottom, to the floor, about six feet, wasn't it?

A. No, it wasn't six feet

Q. How much was it?

A. About five feet, or five feet six inches.

Q. You could stand up very readily in it, couldn't you?

A. Yes, I could stand up—not in the back of the cabin—the front of the cabin I could stand straight, but not in the back.

Q. But you had to go up from the floor to get on the deck two and a half feet, then, didn't you—from the floor of the cabin to the top of the deck, when you would go up the steps to get on the deck it was about two and a half feet, wasn't it, up there?

A. Yes, it was about two and a half feet.

Q. About two and a half feet there.

A. I didn't measure it, I don't know exactly.

Q. You spoke yesterday of these life preservers. Where did you look for the life preservers?

A. I looked for the life preservers in the bunks and up top bunk and in the lower bunk and all over.

Q. The bunks are in the cabin, aren't they?

A. Yes, the bunks are in the cabin.

Q. And with all this fire in the cabin after the explosion took place, and you burned, you state that you came out with the

86 flame, and you looked in there and saw the bunks to ascertain if there were any life preservers there?

A. I looked when I came up from water again and into the cabin.

Q. What?

A. I looked when I came up from the water and into the cabin again, after I got hurt.

Q. At the time of the explosion and when you were burned, when the cabin was filled with flames, did you look in the bunks for life preservers?

A. I couldn't look anywhere——

Q. Did you do it? Not what you might have done or what you could have done. Did you do it?

A. Well, I tried to look over and I couldn't see anything.

Q. All in flames and you could not have then—you didn't try to find life preservers?

A. Yes, I tried to, but I couldn't see anything.

Q. You tried to find life preservers while you were still in flames?

A. Yes sir.

Q. In other words, you would have the jury believe that you stayed there in these flames instead of getting out, and you searched in the lower and upper bunk to ascertain if there were any life preservers there; is that right?

A. No sir, I didn't stay there. But—I didn't stay there in the flame and look for life preservers, no sir, I didn't.

Q. So you didn't look for the life preservers until after you had come back from your submergement in the water?

A. Well, I had it in my mind and I ran up and I looked
87 for them.

Q. Where did you look?

A. I looked on top of the cabin when I came up.

Q. When you came up you looked on top of the cabin. Are life preservers carried on top of the cabin?

A. That is the place they were supposed to be.

Q. Don't you usually carry them under the bunks in all steamboats?

A. No sir, they are not supposed to be in below.

Q. In steamboats it is universal to carry them——

A. Well, usually carry some in the steamboats.

Q. In all steamboats isn't it the universal custom to carry life preservers under each one of the bunks?

A. No sir.

Q. Then why did you—while you were still in the cabin and while you were looking for the life preservers, why did you look in the upper and lower berths to find them?

A. After I came aboard——

Q. Before you came aboard. You said you looked for life preservers while you were still in the cabin, after the explosion, as I understood it. If I am wrong, correct me.

Mr. Arctander: The witness didn't state any such thing.

(Mr. McCord:)

Q. If I am wrong, correct me. Why did you look in the bunks to find the life preservers, if it was not the custom to carry them there? Answer the question.

A. I looked after I came aboard, I looked if there was any life preservers and I couldn't see any life preservers.

Q. Mr. Sandanger, when this explosion took place and you rushed on deck, you still looked on top of the cabin, while
88 you were burning, to ascertain if there were any life preservers there, so that you could put one on, didn't you?

A. Yes.

Q. And with all the flames on you, you were going to still put a life preserver on, in order to jump in the bay, were you?

A. Yes, I looked for life preservers when I came up, and there was no chance——

Q. And your clothes were all aflame, and your face was burned and your hair—your hat, cap was burning, and you stopped to look for life preservers before you jumped over?

A. Yes sir.

Q. When you got on the deck, didn't Mr. Stensland and, the other boys tell you to jump overboard?

A. No sir, there was nobody told me to jump overboard.

Q. And it was only two feet; you were an experienced swimmer, weren't you?

A. Yes, if I wasn't an experienced swimmer, I suppose I would not be sitting here.

Q. You were a good swimmer and you want this jury to believe that you stood on the deck, looked around on top of the cabin to find life preservers to put one on, in your burning condition, rather than step overboard there two feet and a half to the water; is that right?

A. Yes sir, I looked for life preservers before I jumped overboard.

Q. The very moment you got on the deck after the fire they pushed you right overboard, didn't they?

89 A. No sir.

Q. Told you to go right over quickly, that it was your only chance?

A. No sir.

Q. Nobody did?

A. No sir.

Q. These three other men you would have us believe stood there on the deck and didn't assist you at all?

A. No sir, they didn't push me overboard at all.

Q. Didn't help you to get off the boat?

A. No.

Q. Didn't tell you anything about it?

A. No sir, there was nobody said anything.

Q. But the very moment you did jump over, then they pushed a plank off the boat for you to hold onto until they could pick you up, didn't they?

A. Well, they pushed a plank overboard, yes.

Q. Pushed it off in front of you, didn't they? You only had to swim a few feet?

A. I swam about 40 feet before I reached the plank.

Q. You were able, then, to swim, were you?

A. Sure.

Q. I say, you were in a condition where you could swim then?

A. Well, I came to—when I came in the water I came to so that I could swim.

Q. How long after you came on the deck did you spend in looking for these life preservers before you jumped overboard?

A. A few seconds.

90 Q. Then you rushed and jumped overboard?

A. Yes, I jumped over, for I knew it was the only chance, because I thought everything was gone, anyhow.

Q. You were not afraid to jump into the water when you could swim, were you?

A. I would not jump in the water if there was—because cold water. I would be afraid, if I was not burned and didn't have——

Q. You stopped to consider all that at that time, I suppose, did you?

A. I had to that time.

Q. I say you stopped and considered the danger of trying to swim in your condition, did you?

A. Yes sir, that is the only chance I have, and I can't find anything to hold onto, I took my chance on my life and jumped overboard and jumped over.

Q. And none of these men made a suggestion to you, didn't tell you what to do or anything about it?

A. No sir, not that I know.

Q. They paid no attention to you, but let you go?

A. I didn't see anybody pay any attention at all.

Q. Mr. Jorgenson and Mr. Utness were friends of yours, weren't they, and Mr. Stensland?

A. Yes, they were friends.

Q. And they stood by and didn't try to assist you or advise you or do anything?

A. Well, they couldn't do anything. I was burning, the flames was all over; they couldn't do nothing.

Q. When you came out of the cabin, was the cabin still full of flame when you came out, as you came up the steps of

91 the cabin to the deck?

A. Well, there was flames when I jumped overboard, there was flames all over the cabin.

Q. All over the cabin at that time. And how long had it been between the explosion and the time that you jumped overboard, about how many seconds? A half a minute?

A. I don't know exactly how much, because I was in no condition, I couldn't know.

Q. When the explosion took place you were thrown over and rendered unconscious?

A. Yes sir.

Q. And then afterwards got up, looked in the bunks to see if you could find life preservers, then came up the steps?

Mr. Arctander: He didn't say that. The witness has not said anything of that kind.

Mr. McCord: It is for the jury to determine, not you.

Mr. Arctander: No. I object, and I will preserve my rights if I can.

Mr. McCord: I object to counsel——

The Court: One moment.

Mr. McCord: If you want to make any charges of misconduct, I will give you plenty of chance.

The Court: One moment. Let Mr. McCord cross examine the witness.

Mr. McCord: And stop interrupting.

The Court: You object to the question and I will rule on it when you object to the question properly.

(Mr. McCord:)

Q. How much time was consumed before you jumped overboard, after the explosion?

92 A. I don't know how many seconds.

Q. Well, was it a half a minute, was it a minute?

A. Well, I guess about a minute, I guess; I don't know—I can't—I don't know how long it was. When I came up, then I was looking for the——

Q. When you jumped overboard, they pulled the boat back and lifted you on board, didn't they, the other people, the men on the boat, they rescued you, took you out of the water?

A. Yes, when I swam to the boat, yes.

Q. They dropped the boat back and picked you up?

A. No, they could not bring the boat back, because the boat was running full speed and it was going about 300 feet ahead of me, and then the engine stopped and the boat was laying there, they had nothing to pull with and nothing to help themselves with, no skiff or boat or nothing, so I had to swim right to the boat. I was in the water ten minutes.

Q. Did you get a plank?

A. Yes, but there was a little time before I got the plank.

Q. They pulled the boat back, didn't they, afterwards?

A. But they didn't have nothing—they had only—they had—there was broom, but that is all they had to paddle with. The engine stopped—about 28 feet—you can't pull anything with a broom.

Q. The engine had stopped?

A. Yes sir, had completely stopped.

Q. The engine stopped and you had to swim up to it?

A. Yes sir.

Q. Then they helped you on the boat and then what did
93 they do, took off your clothes, did they, part of them, put on dry clothes.

A. Yes. I didn't have any clothes left.

Q. What?

A. I didn't have any clothes left.

Q. They gave you dry clothes to put on, didn't they?

A. Yes. I got some from Isaac Utness, I got overall, he had overall over his pants, I got that and I got shirt from somebody else, I don't know who it was.

Q. And they took you on to the cannery, and as soon as you reached the cannery they took you up to the hospital, didn't they?

A. No sir, didn't go to the cannery.

Q. Didn't go to the cannery. Where did you go to, where did you land?

A. We went to Cordova.

Q. Went to Cordova?

A. Yes.

Q. And landed at the dock and then walked on up to the hospital, didn't they?

A. Yes.

Q. I believe you stated that the defendant in this case, the Carlisle Packing Company, furnished you medical attendance, hospital attendance, they paid your hospital bills?

A. Yes sir.

Q. Furnished a doctor and nurse, didn't they?

A. Up to Cordova, yes.

Q. They paid all of those bills, did they?

A. What is that?

94 Q. I say, the company, the defendant, paid the hospital and doctor's expense at Cordova?

A. Yes, they did.

Q. You were in the hospital about a month?

A. About a month.

Q. And after you got out, they gave you a job at the cannery, did they?

A. Yes, they——

Q. You were watchman?

A. Watchman, watched gate, yes.

Q. And how long did you occupy that position?

A. That is what I had at the time I was in the cannery, when I left.

Q. You were injured on the 7th of March, and you were about thirty days in the hospital, which would bring you out of the hospital about the 7th of April, and you remained——

A. Yes sir.

Q. —as watchman up there from the 7th of April until you quit, when?

A. That was in July.

Q. Quit in July. So you worked as watchman at the cannery, or attended to the duties of watchman——

A. Well, I was in the cannery for about two weeks before I started to watch the gate, but I was able to walk around then and then I watched the gate for——

Q. About three or four months—three months, wasn't it? Well, from April until July. When did you quit in July?

A. July.

Q. That is the time the canning season was over, was it?

95 Did you quit before the canning season——

A. I quit—they had quit on the red salmon.

Q. You finished when they had finished canning red salmon?

A. Yes sir.

Q. A great many others quit at the same time and came down with you, though?

A. I don't know anything about that.

Q. You do know who came down with you on the boat?

A. There was nobody came down with me.

Q. Were you the only man that left the employ of the company in July when you started for Seattle?

A. I was the only man that was aboard that boat I came down on.

Q. None of the other men quit?

A. That I know. I didn't know anybody.

Q. You don't know anything about that?

A. No sir.

Q. Was your wife with you at that time?

A. Yes, my wife was there.

Q. She came up after you were hurt, didn't she?

A. Yes.

Q. What time did she get there? You were injured on the 7th of March. What time did she get there?

A. Well, she came there about—I was up when she came up: I guess I been up—exactly—I don't know exactly how long.

Q. Where did you live while you were working at the cannery, after you came out of the hospital, did you and your wife live in a house, keep house?

A. We had a house up town.

96 Q. That was not one of the company's houses?

A. No sir, they didn't furnish houses.

Q. And they paid you your regular wages of a hundred dollars a month, did they, during the time you were working there from the 7th of March on until July when you quit?

A. I don't know how much they paid, but they paid me——

Q. You do know how much you were earning, don't you?

A. Paid me $405.

Q. How much were you getting, what were your wages?

A. Well, I was supposed to have $60 a month before they started the fishing season, and when we——

Q. $60 and your board?

A. $60 and my board, and when we started the fishing season I should have the average for the amount that they catch each day, what other fishermen done.

Q. And in that way you received about $405 from the company. Then you came to Seattle. How much work did you do in Seattle, and where did you work?

A. I worked down—I was trying to work two or three times, but had to quit——

Q. I say where did you work?

A. I went out to fish on the Sound—salmon.

Q. What?

A. I say went out and worked fishing salmon on the Sound.

Q. For whom were you working down on the Sound, who did you work for, who did you start to work for?

A. There was—for a fellow over in Tacoma.

Q. Well, who was he?

A. I don't remember his name. It was only that two days and I quit.

97 Q. You don't know who he was. How much did he pay you for your two days' work?

A. Didn't pay me anything. We didn't make anything.

Q. You were not supposed to get anything unless you caught the fish?

A. No.

Q. You were working on a contingent fee, then, were you—contingent wages?

A. Yes.

Q. Then what other place did you work at?

A. Well, I was trying to work on shipyard.

Q. I am talking about July, right after you returned in July, 1917. You worked over at Tacoma, you say, a couple of days. Where was the next place you worked and when was it?

A. Well, I should work down in the shipyard. I worked only a couple or three hours then I——

Q. Where was it, whose shipyard?

A. It was down at Nilson's.

Q. Nilson's shipyard?

A. Yes.

Q. And you only spent two or three hours there?

A. Yes, and then I had to quit because I couldn't do any——

Q. Never mind about why you quit. I am asking how much time you put in. Then where did you work next, or try to work next?

A. Down at Nilson's, something else.

Q. Something else. And have you worked anywhere else except Nilson's?

A. No sir.

98 Q. And your burns had healed up when you left the cannery, hadn't they?

A. It took about three months before they healed up.

Q. When you came down to Seattle, all of the wounds had been healed, had they?

A. Well, there was—on this hand was quite healed, but it opened up once in a while, they opened up and wasn't quite healed up, but——

Q. Took some little time to heal?

A. Yes, the skin was thin, you know, cracked.

Q. Finally healed up. You say you went to Dr. Dowling, a specialist here, for what trouble?
A. For my eyes.
Q. For your eyes. You can read with your glasses, can't you?
A. Well, I can read, but not much. If I read for ten or fifteen minutes——
Q. Your eyes grow tired, do they?
A. Yes, they — wide open, but I can't see.
Q. Your eyes were burned on the outside, the eyeballs were not burned, were they, not injured?
A. Well, there was about——
Q. Just the eyebrows burned off, weren't they?
A. The whole skin was burned right inside of eyes.
Q. But on the left side of your face there were no burns at all, were there, and on your left eye there was none?
A. It had burned my skin up all here too, but——
Q. No scars there?
A. No scars.
Q. Cured you without leaving any scars?
A. No.
Q. And then when did you finally go to work—you said you worked about two and a half months, losing probably a month's time. When was that?
A. That was down at Nilson's.
Q. I say when?
A. That is in June I started there.
Q. In June of this year?
A. Yes.
Q. And you are working there now, are you, before you came to your trial?
A. Yes. Well, I haven't been working now for a week.
Q. For a week, but prior to that time you were working there, were you?
A. I was employed there, yes.
Q. And earning $4 a day, were you?
A. Yes, I was earning $4 a day.
Q. And what did you say you were doing?
A. I was helping around the bandsaw.
Q. And you have put in about a month and a half's time out of two months and a half; is that right?
A. Yes, about that.
Q. Now, you don't suffer any pain from your hands and face now, do you?
A. Yes, I did.
Q. Perfectly healed up. Do you still suffer pain?
A. Sometimes it breaks out, them scars breaks out.
Q. But you only suffer when it breaks out?
A. Yes; I can feel them pains.
Q. Naturally you feel pain.
A. And pain *it* all the time.

100 Q. Yes. You can feel the pain, but you don't have any acute pains until there is an abrasion, it breaks out in some way; that is right?
A. Yes, I have pain all the time.
Q. What?
A. Yes, I can feel it all the time.
Q. And you were burned on your thigh too, were you?
A. Yes.
Q. That is all healed up?
A. The skin on it, yes.
Q. You don't have any difficulty in walking, do you?
A. Well, sometimes the leg get awful tired, and I can feel it always pains.
Q. And you claim you can't eat anything—you don't eat meat?
A. No sir, I can't touch meat.
Q. Eat fish, do you?
A. Yes, I can eat a little fish.
Q. Bread?
A. Well, a little bread. I can't eat the rye bread.
Q. How does your weight now compare with what it was before the injury?
A. Well, now I guess I am a hundred and eighty pounds or 75 or 80. I haven't weighed——
Q. You weigh 175 or 80 now?
A. Yes.
Q. How much did you weigh at the time of the injury?
A. That was 198, 203 pounds.
Q. How tall are you?
A. I am five feet, about seven inches, I think.
101 Q. And you weighed before the injury 200 pounds, approximately, 190 to 200 pounds, so that you have not lost any particular weight since your accident?
A. Yes sir, I have.
Q. You have lost the difference between 185 and 198 pounds?
A. Not 185.
Q. I thought you said you were 185?
A. No sir, I said 175 or——
Q. Or 80?
A. Or 80.
Q. I thought you said 85. Now, you say you have some trouble with your throat?
A. Yes.
Q. Have you consulted any throat specialists for the purpose of finding out what your throat trouble was?
A. Yes, I was——
Q. Who?
A. Well, I was up——
Q. Who did you consult?
A. Well, Dr. Dowling.
Q. Dowling?
A. Yes.

Q. Where is he now?
A. He is up in Cobb Building.
Q. He treated you for your throat?
A. Well, he didn't treat me very much.
Q. He just looked at it?
A. Yes, he examined it.
Q. What have you done towards curing this burned throat, if anything?
102 A. Well, I had some—I got some medicine to gargle, that is all.
Q. He gave you some medicine?
A. No, he didn't give me any medicine.
Q. Well, who gave it to you? Just went to the drug store and got some yourself?
A. Yes.
Q. What did you get?
A. I don't remember.
Q. How did you happen to get it, how did you know what to get?
A. Well, because I was sore in the throat all the time and I——
Q. The druggist prescribed for that instead of the doctor, did he?
A. Yes sir.
Q. Now, I understand you to say something about when you eat meat or anything of that sort, that you threw it up, threw up blood?
A. Yes.
Q. How long after the accident did that continue?
A. Well, I started to notice that right away after I came up from the hospital, or I was in the hospital for—just after I came up from the hospital.
Q. That is the hospital at Cordova?
A. Yes.
Q. How long did that continue after you left the hospital, very long?
A. What is that?
Q. How long did you continue to throw or spit up blood
103 from your throat after you left the hospital at Cordova?
A. Well, up to today I noticed it.
Q. What is that?
A. I have done it up to—up right up to today.
Q. Right up to now?
A. Yes.
Q. And you haven't taken the precaution or trouble of going to a doctor to get treatment?
A. Yes, I have been to a doctor.
Q. But he didn't think you needed any treatment, did he?
A. I don't know.
Q. He didn't recommend anything, did he?
A. Yes, sure, I was in the hospital for it.
Q. I thought you went into the hospital for something else?
A. No sir.
Q. What hospital were you in for your throat?
A. It was not for the throat.

Q. What was it for?
A. For the stomach.
Q. For the stomach. That was Dr. Leede's hospital, was it?
A. No sir.
Q. Whose was it?
A. Dr. Fick.
Q. Dr. Fick's hospital?
A. Yes.
Q. That is the one over on Boylston?
A. Boylston.
Q. He kept you there about three months?
A. Yes.

104 Mr. Aretander: Three weeks.

A. Three weeks.
Q. You were treated there for about three weeks, and his treatment consists of dietetic treatment—feeding, doesn't it, he doesn't give you any medicine at all.
A. Yes, every meal he gave me medicine, three or four times a day.
Q. But he made you eat specially prepared food for the purpose of building you up and giving you strength and flesh, did he not?
A. No sir, I didn't eat anything——
Q. The whole time you were there?
A. I ate only eggs—a little eggs and a little rice and milk, that is all.
Q. How many times a day would he require you to eat?
A. I don't know how many times; about three.
Q. You were not thin then, were you?
A. Yes sir, I was 158 pounds.
Q. And he built you up to one hundred and seventy-five, did he, in that three weeks?
A. No, I didn't gain anything in that three weeks.
Q. You didn't gain anything?
A. No sir.
Q. When did you begin to get thin?
A. Well, it is lately I have gained a little.
Q. Lately?
A. Yes.
Q. How long ago since you began to take on flesh?
A. Oh, about a couple of months.

105 Q. A couple of months. Since June you began to get better, that is, your flesh is beginning to increase, your weight has increased, I say?

A. Well, increased a little.
Q. It has increased you say, from 158 to 175 pounds or 180 pounds, whatever your weight is now. Now, Mr. Sandanger, you feel a great deal better now than you did a year ago, don't you?
A. Well, I don't feel much better.
Q. You don't feel much better.

A. I feel better, yes. I can't deny I feel a little better, but I don't feel——

Q. You don't want to deny that, you are glad that you do feel better, aren't you?

A. Yes, I feel a little better.

Q. And in the summer of 1917 you said you were unable to work over two hours in one day or two days?

A. No sir, I was not able to work anything.

Q. Were not able to work anything, and yet in the summer of 1918 you have improved to such an extent that you can put in about two-thirds of your time in work; is that right?

A. Yes.

Q. So that you are better in 1918 than you were a year ago, aren't you?

A. Yes, I — a little better.

Q. And you are able to work now and able to earn $4 a day?

A. No sir, I am not able to——

Q. Well, you are doing it, aren't you?

A. Well, if I work for a day I might have to lay off for a week; that is the way.

106 Q. According to your statement——

A. But it isn't because I feel better, but I have to do something for my living, I can't starve.

Q. So that you can work and you have worked about two days out of three since June; that is about right, isn't it? That is what you said, wasn't it—lost about a month since June?

A. Yes, I have lost about a month?

Q. So that you have been working about two-thirds of the time, at $4 a day, and you must admit that you are very much better than you were a year ago, both as to strength and as to weight, aren't you?

A. Well, I am better, yes.

Q. You have been improving steadily since June, haven't you?

A. If I wouldn't get better, I suppose I wouldn't be sitting here.

Q. Yes, you are getting better, aren't you? You think you are, don't you, you feel so?

A. I don't feel—the stomach is just as bad, and spitting blood. I can't eat any meat yet.

Q. Can't eat meat?

A. No sir, I can't touch meat yet.

Q. Now, do you suffer any from your hands, do they pain you now?

A. Yes sir.

Q. What sort of a pain is it?

A. It pains me right up to the shoulder.

Q. Right up to the shoulder?

A. Yes.

107 Q. You said something about having a pain across your stomach here.

A. Right across there.

Q. Where is that?

A. I have got pain there.

Q. Whereabouts is that, on your stomach or above your stomach, upon which place?

A. Right over the stomach.

Q. You have that sometimes?

A. All the time. If I eat any meat I got death sick altogether.

Q. And you have that pain pretty constantly, do you?

A. Yes sir.

Q. Across your stomach?

A. Yes sir. I have got that. I feel it all the time, and then if I eat different food I——

Q. When you left the hospital of Dr. Fick, who only kept you three weeks, did he advise you that you were getting better and well?

A. Well, he didn't know. He said I had to have time, he said.

Q. When were you at Dr. Fick's hospital, at what time was that?

A. It was in about three months before Christmas, I guess.

Q. Before last Christmas?

A. No, three months before.

Q. Well, about last November then, or October or November?

A. No, it was a little before.

Q. And you tell me that between the first of January and in June you didn't do anything?

108 A. No sir.

Q. Didn't do anything at all?

A. No sir, I didn't.

Q. Didn't try to do anything at all?

A. No sir.

Q. Now, Mr. Sandanger, you know something about coal oil and kerosene, and something about gasoline too, don't you?

A. Yes, I know.

Q. You know the difference between them, don't you?

A. Yes, I know difference.

Q. You can tell the difference between them by putting it in your hand and rubbing it: that is one test, is it?

A. Yes sir.

Q. What is the difference in the feeling of them, one is more greasy than the other?

A. Yes sir, the gasoline dries up when you put it in your hand, and the coal oil getting greasy, don't dry up.

Q. And can't you tell it from the smell when you are withdrawing it from the cask, you could tell whether it was gasoline or kerosene by the smell of it, couldn't you?

A. Well, I can't explain about it, but I could tell it, yes.

Q. Then if you were pouring it out of the faucet, out of a drum into a can, you could tell whether it was gasoline or whether it was coal oil, by the smell, couldn't you?

A. Oh, yes, I could tell it.

Q. Anybody could do that, couldn't they, that had had any experience in handling them?

109 A. If they had experience of handling it, I suppose.

Q. After the explosion one has a smoky smell and the

other—gasoline has none, has it? What is the difference between the smell after there has been a flare-up?

A. I don't know what the smell is when there is a flare-up. There is no smell at all——

Q. What is it?

A. When there is a flare-up, I don't know about the smell.

Q. I understood on your examination yesterday that after the explosion took place, this flare-up came, you could tell it was gasoline, from the smell?

A. Yes sir, I did.

Q. What is the difference between the smell of gasoline and kerosene after an explosion?

A. There is a difference. There is a stronger smell.

Q. What is the difference. What do you mean by stronger?

A. Well, it is a stronger—you can smell it upon——

Q. What sort of a smell has the gasoline? I will put it to you that way?

A. I don't know what you call it.

Q. What?

A. I can't pronounce it, I don't know what you would call it, but it is a different smell.

Q. What is the smell of the kerosene?

A. Well, it is not so strong as the gasoline.

Q. Not so strong?

A. No.

Q. Gasoline has a kind——

A. A different smell.

Q. Has a different smell, it is sort of a smokey smell, it
110 is like burning grease or something, is it, or wood?

A. I don't know. It is a stronger smell, that is all.

Q. What do you mean by a stronger smell between gasoline and kerosene, which has the stronger smell?

A. Gasoline got the strongest smell.

Q. Gasoline has a stronger smell after an explosion?

A. Yes.

Q. Can't you describe to me the difference between the smell of the one and the smell of the other, if you know?

A. Yes, I can tell you the difference.

Q. What is it?

A. Because it would not be so strong a smell if there was——

Q. What do you mean by "stronger" then?

A. Well, it is—I can't—stronger smell, that is all.

Q. What do you mean by the stronger smell tell me what is your understanding of the meaning of the word "stronger" there?

A. Well, it is stronger smell. You can smell the difference between the oil—gasoline.

Q. Gasoline is the stronger smell, a more pungent smell, is it?

A. Yes, stronger smell.

Q. It is a stronger smell, and the kerosene is a milder smell, is it?

A. Yes, milder smell.

Q. Yes.

A. Yes, sir, that milder smell.

Q. The fumes that came up after the explosion were very strong, were they, after the explosion on this boat in the cabin, they
111 were a very strong smell, and that is the reason you think it was gasoline, is it?

A. Yes, was strong, had gasoline smell.

Q. If it had a very mild smell, you would have thought it was kerosene, would you?

A. If there was kerosene I would——

Q. You would have known it?

A. I would have known it.

Q. It would have been a mild smell, it would not have been as strong as the other?

A. No, I would tell the difference in the smell.

Q. Which one would be stronger? What would be the difference? How would you distinguish? If it had been kerosene that was exploded, instead of gasoline, what would you have smelled, what difference would you have smelled between that and what you did smell?

A. Well, the difference is because the gasoline is stronger smell than the coal oil.

Q. But you can't tell us what you mean by "stronger" you can't describe it?

A. When you inhale it you feel it stronger, that is a different smell, different kind of oil.

Q. What is the kerosene smell—a stinking smell, is it, or is the gasoline the stinging smell?

A. It is kind of——

Q. Which is it, the gasoline smell—is the gasoline stinging or the coal oil stinging, which is it—bitter?

A. Well, the gasoline is stronger smell than the coal oil.

Q. The gasoline is more bitter, is it, has a stronger odor?

A. Well, in one way, I don't know, but that is stronger smell altogether, you can smell the difference.

112 Q. Which is it? I want you to tell me. You ought to know. You know what you mean. You say you can tell the difference. Try to explain to me in some way what that difference is.

A. Well, I can't explain it altogether.

Q. If you know——

A. It is a different kind of a smell.

Q. Tell wherein the difference lies; what is the difference? I am not trying to confuse you, I want the facts.

A. Well, the difference when the gasoline is stronger than the smell in the coal oil.

Q. What do you mean by "stronger," is the odor stronger of one than the other, or is one more bitter than the other, one more pungent? What do you mean, stinging?

A. Well, that is——

Q. Which is it now, give me the two smells; tell me the difference. You testified yesterday that you could tell the difference in

the smells. Now, I want you to tell the jury what is the difference between the smell or odor of kerosene and the smell of gasoline?

A. The difference—that is a stronger smell in the gasoline than is in the kerosene.

Q. That is all you can say, is it?

A. Yes.

Q. You can't make it any clearer than that one is stronger than the other?

A. No. You can easily tell that.

Q. Now, Mr. Sandanger, there is a difference in the odor and in the smell between the kerosene and the natural gasoline; I be-
113 lieve you stated that. Now, then, when you pour the gasoline in your hand and rub it, it wipes up quicker than coal oil, does it?

—. —.

Q. And coal is a little more greasy, too?

A. Yes.

Q. Can you distinguish the difference between them by sight, by looking at them? Can you tell the difference between kerosene, from looking at it and gasoline, from looking at that?

A. I haven't had any experience about the look at it.

Q. You can't tell?

A. But I can tell it in my hand.

Q. You can't tell it from the looks of it?

A. No. I can tell it on the——

Q. You have to look at it to tell it?

A. When I put it in my hand.

Q. But I say you can't tell simply from seeing it in the receptacle—they are both clear, are they?

A. Yes, they are both clear.

Q. Both transparent and you can't tell one from the other, can you?

A. No, except I used to take it in my hand; and I never had experience to look on it.

Q. Now, Mr. Sandanger, you say that this stove was a sheet iron stove, do you?

A. Yes sir, it was a sheet iron stove.

Q. What thickness was the iron?

A. It was a thin—I don't know about——

Q. The sheet iron, how thick was it, about one-sixteenth, do you think, or an eighth of an inch?

A. About a quarter of an inch.

114 Q. About a quarter of an inch thick; and what sort of grids did it have, cast iron top did it have?

A. Same kind of top—iron.

Q. Wasn't the bottom of the stove cast iron and a different material from the other part of the stove?

A. Not that I——

Q. Used to have regular caps that you put in and lifted up the caps or lids?

A. No, we didn't have that.

Q. You didn't have those. What sort of lids did you have on it?
A. Well, 'round lids.
Q. Well, are those made out of sheet iron?
A. Yes sir, sheet iron, but they were a little thicker.
Q. How did they go on, how did those lie on top there—say this was the cap, the top of this post——
A. Yes.
Q. —did the lid lay right into the hole?
A. Yes.
Q. How?
A. Yes.
Q. Or was it just a flat—was it like that, just went over the top of that, or over the top of the hole, or did it fit down into the hole?
A. It fit down into the hole.
Q. And you are positive that that was not cast iron?
A. Yes.
Q. What is that?
A. It was sheet iron.
Q. And not cast iron—on the top, I mean?
115 A. No sir, it was the same thing.
Q. Now, you remember when you put your hand down in there, raking the ashes up, that there was only about an inch and a half or two inches of ashes and sand altogether?
A. Yes sir, I do.
Q. As a matter of fact, don't you recall that it was not sand, but gravel; there may have been some sand mixed in it, but sand and gravel to the depth of four inches in the stove?
A. No sir, there was no gravel at all.
Q. No gravel at all in there?
A. No sir.
Q. As a matter of fact, the bottom of this stove was also of sheet iron, wasn't it?
A. Yes sir, sheet iron.
Q. And that sheet iron was how far above the bench—the bottom of the stove was how far above the bench, about how many inches?
A. About three inches.
Q. About three inches above the bench?
A. Yes sir.
Q. And when you put this wood in this sheet iron stove, it immediately became red hot, did it not—the whole stove would get perfectly red hot, wouldn't it?
A. No, well, if you put lots of wood in, I suppose it would get red hot.
Q. Heat up very quickly?
A. Yes, they heat up quickly, and they cool quickly too.
Q. Who got the dinner on that day in question—Mr. Stensland?
A. No, Isaac Utness.
116 Q. Who did cook the lunch?
A. It was Stensland who brought the lunch up.
Q. But who cooked—who heated the soup, made the soup and heated it up?

A. Well, Isaac Utness, he made a fire and he started to fix up the soup, and then——

Q. Who made the fire?

A. Isaac Utness.

Q. Utness made the fire?

A. Yes sir.

Q. Who put the soup on?

A. He put the water on, and then it was a can of vegetable soup was going to warm up.

Q. Just warmed it up?

A. Yes; and then he didn't know how to put that up, it was a new kind of——

Q. Who showed him how?

A. Iver Stensland, he showed him how.

Q. Iver went down where he was making the soup. Iver Stensland went down when he was making the soup?

A. Yes, went down when Isaac was making the soup and helped him.

Q. Helped him make the soup. So that Iver Stensland was down and helped prepare the lunch, was he?

A. Isaac was preparing the lunch, but Stensland came down and show him.

Q. Where were you at that time?

A. I was on deck.

Q. How did you know who made the fire that day?

A. Because I saw it with my own eyes.

117 Q. You looked down, stuck your head down through the hatchway to see?

A. Yes sir, could see it when standing aft on the boat, you could see right down, because you see——

Q. Where were you standing in reference to the cabin?

A. I was standing on the middle of the boat.

Q. Looked down and saw Stensland making the fire, wasn't he?

A. No sir, not Stensland.

Q. I mean Utness making the fire?

A. Yes sir.

Q. How did he make the fire?

A. Yes sir, I did.

Q. How was he making the fire, what was he using?

A. He put a little wood in, the same kind as I had, I guess, and then he took a little waste.

Q. And put waste in, did he, and then lighted the fire?

A. Yes sir.

Q. You saw Utness do that?

A. Yes sir, I saw him do that.

Q. And you are sure that Mr. Stensland didn't do that?

A. No sir, he never—he was not down; he was on deck when Isaac made the fire.

Q. Then he went down to help him get the soup up?

A. Yes.

Q. And after the soup was prepared, that was put up on deck on the table?

A. Yes——

Q. And who prepared the coffee that day, Mr. Utness or Mr. Stensland?

A. Well, they had the coffee on the stove at the same time.

118 Q. How did you happen to know of that, Mr. Sandanger? You saw the coffee pot on the stove?

A. Sure I saw the coffee pot.

Q. How many lids were there on the stove, four or two?

A. Two.

Q. One had the coffee and the other the soup?

A. Yes sir.

Q. Did Mr. Stensland go back to make the coffee?

A. He brought up first the soup and then he ran down and got the can of coffee.

Q. Ran down?

A. Yes. Well, he went down on the floor and took it off the stove.

Q. He had to go down in the cabin to get it, didn't he?

A. Yes, he went down and took it off of the stove with his left hand and brought it up.

Q. You didn't see him go down and make the coffee or put any more wood into the stove?

A. I saw him when he took the coffee pot off.

Q. Do you know whether he put any more wood in the stove or not?

A. No sir, he didn't put any more wood in the stove at all.

Q. How does it happen that you remember whether he did or whether he didn't put any wood in the stove?

A. Because I was sitting right on the hatches, I was sitting on a little box there, and we had a table right there, and we could see right down in the forecastle.

Q. You were watching him very closely, were you? Why?

A. Well, we didn't watch him, we were up on——

Q. How did it happen that you observed so closely whether

119 Mr. Stensland put any wood in the stove, any additional wood in the stove, or whether he didn't? You didn't see him put it in?

A. No, I didn't see him put wood in there. He didn't put any wood in at all.

Q. He didn't put any wood in, so far as you know?

A. No.

Q. You didn't see him put it in?

A. No, he didn't put any in.

Q. You wouldn't say he didn't put it in, would you? How do you know he didn't?

A. Because I saw it.

Q. Did you keep your eye on him every minute to see whether he was putting any more wood in that stove or not?

A. Because I saw when he went down and took the coffee can from the stove, and he didn't go back again.

Q. While he was down there, did you watch him every second he was there, every minute he was in the cabin?

A. He was not down after he brought the coffee up; there was nobody down there after that.

Q. How do you happen to remember that so well?

A. Well, I suppose I can remember that just as well as any of the rest of it.

Q. You remember that with accuracy, do you, clearly, that Mr. Stensland didn't put any more wood in the stove?

A. Yes sir, I do.

Q. How?

A. Yes sir.

Q. Do you know whether anybody else put any wood in the stove?

A. There was nobody down after we took the——

120 Q. You testified this morning that there was not any fire in the stove from breakfast on until lunch time?

A. No sir, there wasn't.

Q. You were watching the stove all during that six hours, were you, prior to lunch?

A. You can easily see if there was any fire, and there was nobody down in the cabin, anyhow.

Q. What were you doing on deck, what was your business, was it watching the stove to see whether there was fire in there or not?

A. I was the crew on the boat, I could be anywheres on the boat.

Q. Could be anywheres, but you now say that during that whole morning you were watching the cabin so closely that you know there was no fire in there at all; are you prepared to swear to that?

A. How is that?

Q. I say, you are prepared to testify that nobody was in that cabin in the forenoon?

A. Well, Isaac Utness, he was supposed to run the engine and he was down to run the engine.

Q. Who was that?

A. Mr. Utness.

Q. Utness was running the engine?

A. Yes.

Q. Where was the engine located with reference to the stove?

A. Well, there was about four feet away from the stove.

Q. Further in the cabin?

A. In the center of the boat. The stove was standing on

121 the side. Engine was in the center.

Q. The cabin covered the engine and the stove both, did it?

A. Yes sir.

Q. They were all in the same place?

A. Yes.

Q. Now then, when the explosion took place the gasoline around the engine—it blew out the gasoline so that the engine stopped, did it? It was all black, too, wasn't it, around the engine?

A. It was all black that was in there at the time of the explosion, it was all black.

Q. It stopped the engine?

A. The engine didn't stop when it was running for a little while.
Q. It was a gasoline engine, wasn't it?
A. Well, at that time she was running with distillate, a different grade of oil.
Q. It stopped, too, you said, awhile ago, didn't you?
A. That stopped after——
Q. What?
A. Yes, she stopped.
Q. The engine stopped?
A. Not exactly when the explosion was.
Q. How long after the explosion did the engine continue to run?
A. Well, she ran about—she ran about—there was about 150 feet, I guess, after, it ran.
Q. 150 feet before she stopped?
A. Yes.

Q. And yet that explosion—the engine and the stove and
122 you were all in the same cabin, and it blew you over, knocked you against the side of the vessel, rendered you somewhat unconscious, and yet the engine continued to run—the gasoline engine, did it?
A. Yes, it ran a little while.
Q. But it did stop, did it?
A. Sure she stopped.
Q. Did she stop because she was put out of commission by the explosion, or not?
A. Well, I was not aboard when they stopped it. I don't know about that. But she stopped and the boat was laying there and I was in the water.
Q. Was Mr. Utness down with the engine when the explosion occurred?
A. He was just coming down to——
Q. He was not at the engine, he was not down by the engine when the explosion took place, was he?
A. Yes, he was. It is—that is, he was just coming down; he was going to oil the engine.
Q. He was coming down from the deck?
A. Yes.
Q. But he was not down in the engine room at all?
A. He was down in the cabin where the engine was.
Q. He was in the cabin?
A. Yes, he came down—just was coming down the steps and coming right down when the explosion——
Q. Was he down by the side of the engine when this explosion took place, or was he up on deck?
A. He was down beside of the engine, just came down on the floor.

123 Q. He was down inside of the cabin when the explosion took place?
A. Well, he was right back of the stairway, right—you know there is——

Q. There are two or three steps from the deck down to the bottom of the cabin, aren't there?

A. There is two steps.

Q. Two steps, yes. Where was he with reference to the engine?

A. He was standing right back of the steps, was going to oil the engine.

Q. Was standing on the deck, was he?

A. No sir, he was not standing on deck.

Q. Was he standing on the steps?

A. He was standing just—I don't know if it was one foot on the steps and the other on the floor, but he was just—just going right down.

Q. Now, was he burned at all?

A. Yes sir, he was burned.

Q. He was burned some too, was he?

A. Yes, he was.

Q. He went on up?

A. Yes; it throwed him right out. He was standing, it throwed him right out through the door.

Q. And everything in there you say was smashed up all to pieces, things were knocked down, dishes were knocked around?

A. Yes.

Q. And you were thrown around?

A. Everything was mussed up.

124 Q. And the tin can was thrown out of your hand, was it?

A. Yes sir, there was busted all to pieces.

Q. It didn't bust all to pieces in your hand, did it; the explosion came up out of the stove and struck the tin can and exploded it too, did it?

A. Yes sir, I was holding the can in my hand and he busted right when I was holding in my hand.

Q. You held it in your hand after it exploded, did you?

A. No sir, I didn't.

Q. Where was it when it exploded, had you dropped it?

A. The pieces was scattered all over.

Q. Scattered all over the room, were they?

A. Yes sir, they was.

Q. Now, isn't it a fact that the tin can was thrown over clear across the room against the wall before the explosion took place—before the explosion of the oil in the can?

A. Not before the explosion.

Q. When you dropped the match into the stove, you held the can in your left hand or your right hand, you took your left and dropped your match in there, and the explosion came from the oil in the stove, and that is what flared up, wasn't it?

A. Well, when I was going to drop the match the explosion went immediately, so I don't know.

Q. You don't know.

A. It came—the can and the whole business exploded all at once.

Q. You don't know anything about it.

A. As soon as I was going to drop, so I don't know anything
Q. You were unconscious from it, but you saw the match
125 drop and the flames come up, you didn't know anything——
A. Just like a cannon shot to me.
Q. You never saw this tin can until after you came up out of the water, did you?
A. No, I didn't see it.
Q. You never saw the tin can any more after the explosion——
A. Not before I came——
Q. After you dropped the match, until you had been up on deck—down in the water and come back?
A. No, not before I came from the water.
Q. How is that?
A. No, I didn't see it before I came from the water up.
Q. You didn't see it between the time—while you were still in the cabin before you went up on deck?
A. Yes, I saw it in the cabin, but I say I didn't see in the explosion.
Q. You didn't see the tin?
A. I saw it before the explosion.
Q. I understand that, but I mean after the explosion you never saw the can until after you came back on deck after you had been in the water?
A. No sir.
Q. Now, what else was broken in that cabin, any of the dishes broken?
A. The dishes were broken, some of them, and everything was scattered all over.
Q. What became of the stove, was that blown off of its legs?
A. It didn't have any——
Q. I say the stove?
126 A. Well——
Q. What became of the stove?
A. Well, the stove was not broken, but——
Q. Was it still remaining resting on the bench?
A. Yes. I saw it was broken a little there side of the—cracks on the stove on the back side.
Q. The stove was cracked, you say?
A. Yes, it was cracked a little.
Q. Well, where?
A. In the seam.
Q. On the stove—which seam?
A. Well, it was cracked in the——
Q. Was it in the front or in the back?
A. It was in the back, back; it was cracked in the back.
Q. Did you go over and look at it?
A. I could see that—well, in the front, in that one end; that is in the back.
Q. On the front end or the back end the seam split open a little?
A. Yes.
Q. But it was not knocked off of the rack where it was resting?
A. No, it was not knocked off.

Q. Still on the bench?
A. Yes.
Q. The stove pipe was up there, it was not knocked off, was it?
A. The stove pipe was knocked out.
Q. The stove pipe was knocked out?
A. Yes.
127 Q. Was anything else knocked off the stove, were the lids thrown off?
A. The lids was off on the floor.
Q. Were the ashes thrown out of it, or the gravel scattered over the floor?
A. Yes, some of it.
Q. Some of the ashes were blown out, were they?
A. Yes sir.
Q. But the stove still rested in the same place?
A. Yes, but it was screwed fast, you know.
Q. Screwed to the bench, was it?
A. Yes.
Q. Mr. Sandanger, if the bottom of that stove was only three inches above the bench, you would have to have three or four inches of gravel and sand in there to keep it from setting fire to the bench, wouldn't you, if you only had a sheet iron bottom?
A. No.
Q. Isn't that the reason that the——
A. I guess three or four inches in the stove, there wouldn't be anything left for the wood.
Q. Isn't that the reason they put the sand and gravel into these stoves, because they rest right above the wood and it is to keep it up, to get the bottom up, to protect the bottom?
A. I suppose they do.
Q. That is why it is done, isn't it?
A. I suppose so.
Q. You know it, don't you, you have had experience?
A. Yes.
128 Q. You put the sand and gravel, you put sand and gravel in it, put in three or four inches in the stove so as to protect the bottom and keep it from getting so hot that it will set fire to the wood adjacent to it, don't you?
A. I didn't put anything in that stove.
Q. I say that is why you put it in all of the stoves on those boats up there?
A. No, they use it—some of them they used to put a little, but they commenced to get different kinds of stove now.
Q. This stove just had a sheet iron bottom, didn't it?
A. Yes. It was sheet iron all around, the whole stove was sheet iron.
Q. On all of these sheet iron stoves used on the vessels, it has been your experience that it has been the custom to put three or four inches of sand in there to protect the bottom or to keep it from setting fire to the wood, hasn't it?
A. No sir, if they put three or four inches there wouldn't be——

Q. They put sand in there for that purpose?
A. They may put a little, put an inch or so.
Q. I ask you if it is not the universal custom to put sand and gravel in the bottom of those stoves used on those boats?
A. Yes, usually put an inch or so, a little.
Q. A little?
A. That is all we put in, a half an inch or an inch, that is all they used to put in.
Q. And yet you say there was not any sand or gravel in there, don't you, nothing but ashes?
129 A. I said there was sand and ashes, there was an inch and a half.
Q. An inch and a half of sand and gravel?
A. But not over two inches in the stove, I said.
Q. You told me you took your hand and raked it through that gravel. What for?
A. Because for pushing the ashes aside so that I could have a chance to put the wood in.
Q. And you put your hand down through the gravel, did you?
A. Yes sir.
Q. Clear to the bottom of the stove?
A. Yes, clear to the bottom of the stove.
Q. I mean clear down. Your fingers came in contact with the tin bottom, did they—I mean this sheet iron bottom?
A. Yes sir. I dug right down to the bottom. The stove is only about eight inches high.
Q. Took your hand and raked clear around all through there, did you?
A. Yes sir.
Q. And you found it was only about an inch and a half?
A. Yes.
Q. Wasn't any heat there at all?
A. Was no heat there at all.
Q. Not a bit?
A. Not a bit, no sir.
Q. How long had it been from the time you finished eating your lunch before you went back to build up the fire to heat the water to wash the dishes?
A. From the time we started to eat the lunch until I went
130 down, it was from—about an hour and a half or two hours.
Q. An hour and a half or two hours?
A. Yes.
Q. Nobody had been down in there between times at all?
A. No sir. Nobody went down there. It was all on duck hunting.
Q. Was Mr. Utness out on deck all the time?
A. Who is that?
Q. Utness?
A. Utness, yes.
Q. All four of you?

A. The four of us was standing right there on the back end of the cabin—John Jorgenson——

Q. And you stayed there for two hours after you finished luncheon and no one went down in the hole?

A. It took us about twenty minutes or a half an hour to eat.

Q. It took twenty minutes or a half an hour to eat, and then you all got up and left the table——

A. We didn't have any table except some setting on the cabin.

Q. Who was running the vessel?

A. John Jorgenson was running the vessel and he was eating.

Q. Who was down in the engine room, if anybody?

A. There was nobody, because he didn't have to go down to oil the engine.

Q. The engine was just left run for two hours then, didn't anybody bother it; going right straight ahead, were you?

A. We were going right straight ahead, running along the beach.

131 Q. I understand you ran along the beach, you were not off several miles to do some duck shooting?

A. Well, was running along the beach, was going ahead.

Q. You didn't stop at all?

A. No. Well, we stopped once and picked up these here two ducks—we stopped once to try to pick up a duck.

Q. You didn't pick up any of the other things that you shot?

A. No, we didn't pick up anything other. They were on shore, they were eagles.

Q. Nobody was in the engine room then for about two hours; is that — you want to say?

A. Yes sir.

Q. Nobody was in the cabin?

A. No sir, there was nobody in the cabin for two hours.

Q. As a matter of fact, didn't Mr. Stensland, as soon as you finished your lunch, which took you about fifteen or twenty minutes, after you had eaten didn't he say "Boys, let's clean up everything now and get things in shipshape"?

A. No sir, he didn't.

Q. And didn't he tell you to go down or said somebody should go down and start a fire?

A. No sir, not before about an hour and a half or two hours afterwards.

Q. Wasn't it just after you got up from the table that you went down to do this?

A. No sir.

Q. Within about fifteen minutes after you had the coffee brought up on deck?

A. No sir.

132 Q. And didn't Mr. Stensland tell you that you had better go down and fix up a fire to wash the dishes, and when you went down there isn't this the fact about it, that you took the wood and put it into the stove, without ever looking at it at all, and that

the gravel and sand were hot at the time you poured that kerosene on it?

A. No sir, that is not true.

(Short recess.)

(Mr. McCord:)

Q. Mr. Sandanger, when did you say that you first went into the oil house on the cannery dock at Cordova?

A. That was about four days before I got hurt.

Q. What did you go for?

A. Priming oil, gasoline.

Q. For use on what boat?

A. On the same boat.

Q. Where did you take that oil?

A. I took it from a hundred-gallon drum.

Q. After you got the oil—I didn't ask you that—after you had drawn the oil into the can, what sort of a can was it?

A. It was a little red can, about a fourth of a gallon.

Q. And you took the gasoline in that, did you?

A. Yes, sir.

Q. You wanted some gasoline in that?

A. Yes sir.

Q. And you say you got this out of the oil house, did you, out of one of the drums?

A. Yes sir.

Q. Which one?

A. The gasoline drum.

133 Q. On which side of the house as you entered, on which side as you entered the oil house?

A. It was on the right side as I went into the door.

Q. These barrels or drums were all on racks lengthwise facing you as you came into the door?

A. Yes, they were right on the rack.

Q. And you took the first one or the gasoline tank, was it?

A. Yes sir.

Q. And had nothing marked on it at all?

A. No sir, there was no mark at all.

Q. Did you see any kerosene drum there?

A. There was a kerosene drum, the same size, laying alongside of the gasoline.

Q. How did you know it was a kerosene drum?

A. Because I pumped some out.

Q. Out of which?

A. I took first out from the gasoline drum in my hand, and then I find out it was gasoline, and I pump some of the other too, so as to be sure.

Q. Well why—if you knew it was gasoline, having tested it in your hand and could test it by the smell——

A. Yes sir, I put it in my hand——

Q. I want to know why it was that you went up to that drum and

pumped some of it out, pumped it in your hand, tested it, smelled it, knew it was gasoline, and then why did you pump some out of the kerosene tank?

A. Well, because I was going to be sure.

Q. Why did you want to be sure? You wanted gasoline didn't you?

134 A. Yes sir.

Q. And you knew it was gasoline that you had taken, after testing it, didn't you?

A. Yes, sure I knew it.

Q. Well, why did you go to the trouble of testing it again by pumping some out of the other barrel or the other tank or drum?

A. Well, because I wanted to be sure that there was——

Q. Did you change the pump from the gasoline drum to the kerosene drum?

A. Yes sir, I did.

Q. You had the pump in the gasoline and then you took that pump out and put it over into the other tank, did you?

A. Yes sir.

Q. All for the sole purpose of making sure when you were already sure?

A. Yes sir, surer, find out.

Q. You were already sure it was gasoline, but you wanted to make absolutely sure?

A. Yes.

Q. You were very careful about this, weren't you?

A. Yes, I am always careful.

Q. And other men are always careful, they all test them, do they, that way—is that the custom?

Mr. Arctander: I object to that, as to whether the other men are careful or not.

Mr. McCord: He knows whether it is customary or not.

The Court: Objection overruled.

A. I know it myself.

(Mr. McCord:)

135 Q. Was it the custom of other people to make this same sort of test?

A. I don't know.

Q. Now, how many drums were there in this oil house?

A. That was two 100-gallon iron drums.

Q. On the right hand side, lying side by side?

A. Yes sir, right on the rack when you came through.

Q. Now, on the left hand side of the door were there any drums?

A. There was a barrel, one barrel of lubricating oil.

Q. Do I understand you to say that there were no faucets or openings in these barrels—in the ends of these drums?

A. No sir.

Q. How do you know that, did you look there to see?

A. Yes sir, I looked, and if there was any I would use them.

Q. You would. Well, was there any plug, was there any hole there that had been plugged up?

A. Oh, I couldn't see any.

Q. You couldn't see any?

A. No.

Q. And that is the only time you were ever in this house, was it, just on this one occasion?

A. Yes, I was in there.

Q. Were you ever there before?

A. No, I was not in there before.

Q. Don't you know that the Carlisle Packing Company kept its gasoline in another part of the dock and only kept the kerosene in this oil house?

A. Well, they kept the gasoline in the oil house when I was in.

136 Q. But don't you know, as a matter of fact, that at that time they had gasoline in drums stored on another part of the deck?

A. I didn't see any. I saw some distillate and coal oil was mixed together alongside of the warehouse.

Q. Alongside of the oil house, but on the outside.

Mr Aretander: The warehouse.

(Mr. McCord:)

Q. Warehouse. Where was the warehouse located in reference to the oil house?

A. It was about seventy-five or eighty feet.

Q. Seventy-five or eighty feet. How many drums were there there?

A. Well, I didn't count them.

Q. There were a lot of them, weren't there?

A. I should think there was about a couple or three dozen maybe.

Q. And some of it was coal oil, was it, out there?

A. Yes, they was all mixed up.

Q. How could you tell the difference between the kerosene drums out there and the gasoline?

A. Well, I didn't—I couldn't tell any difference at all except——

Q. Except what?

A. Except when they—some, I know the fellows said there was coal oil, they went and took some.

Q. You testified a moment ago that the distillate and kerosene were all mixed up in the tanks out there at this warehouse. Now, how do you know that there was kerosene there and distillate there?

A. Because there was the same kind of drums there was

137 in the oil house.

Q. The same kind that there were in the oil house?

A. That is the only thing I know.

Q. There were not any marks on any of those drums outside?

A. No sir, I didn't see any.

Q. You could see the red ends and the white ends of these drums, couldn't you?
A. I couldn't see any red ends and white ends at all.
Q. Didn't have any of them painted?
A. No sir.
Q. Either at the warehouse or in the oil house?
A. No sir.
Q. In either place?
A. No sir.
Q. You didn't see any. So that you could not distinguish whether there was kerosene out at the warehouse, or not, could you?
A. Well, there was the same kind of drum.
Q. You just assumed that it was kerosene?
A. Distillate and kerosene.
Q. I say, you just guessed at that, did you?
A. I didn't see any mark that there was, but——
Q. What is the practice and custom everywhere—you have been handling gasoline around up in that country—don't they always put the ends—paint the ends of the drums red, when it is gasoline, and the ends of the drums white, when they have kerosene?
A. No sir, I never saw that up there. They get the drums from —that is, the old drums, they go over to Katalla and get them, they never paint them and they never do anything. That
138 is the reason why.
Q. As a matter of fact it is the custom, however, in the handling of gasoline and kerosene and distillate, to paint the ends of the drum red when it has gasoline, and the end of it white when it has kerosene, isn't it?

Mr. Arctander: I object to that question——

(Mr. McCord:)

Q. Isn't that the custom?

Mr. Arctander: —as not proper cross-examination on anything that was brought out on direct—what the custom is in that country.
Mr. McCord: If he knows what it is. It all bears on his knowledge.
The Court: Objection overruled.
Mr. Arctander: Exception.

(Mr. McCord:)

Q. Isn't that the custom up in—everywhere?
A. Well, I haven't seen it up in that country. I haven't seen the name on any drums there.
Q. That you haven't seen what?
A. Not up there.
Q. Up where?
A. Up in Cordova and around in through Alaska.
Q. You have been up there seven years?
A. Yes.

Q. You have been handling gasoline on boats seven years, and you have been buying gasoline to be used on boats for a long time, seven years?

A. Sure.

Q. I ask you if it is not the custom to have the ends of gasoline cans red and the ends of the—I mean drums, instead of

139 cans—and the ends of the kerosene drums white?

A. I suppose so.

Q. You know that is the custom, don't you?

A. Yes, I know that is the way they should be, yes, that is the way they should be.

Q. How do you know that they bought kerosene at Katalla? Don't you know, as a matter of fact, that there is no kerosene at Katalla—made at Katalla, but that you get some gasoline at Katalla and get your kerosene from Seattle?

A. Well, they say that they get the kerosene and distillate from Katalla; they told me; I didn't see it. The only thing I saw, they had the same kind of drum, and I thought it was.

Q. Somebody told you that, then, did they?

A. Yes sir.

Q. You didn't see it. You don't know that they got any kerosene at Katalla, do you?

A. No. I couldn't——

Q. You have no personal knowledge of it?

A. Because I never tested any oil that came from there.

Q. As a matter of fact, you know you don't buy kerosene in large quantities, except at retail, at Katalla at all, they don't make it, do they, up there?

A. Well, I don't know.

Q. You get your gasoline, they have large quantities of gasoline at Katalla, don't they?

A. Yes.

Q. But they don't have any kerosene, do they?

140 A. Well, I haven't been over there.

Q. You never got any there, did you, yourself?

A. I have never been over there and got any at all.

Q. You don't know anything about that?

A. I have not been over there.

Q. As a matter of fact, don't you know that the Carlisle Packing Company procured all of its kerosene from the Standard Oil Company in Seattle and had it shipped up there in drums—don't you?

A. Oh, no, I don't know nothing about that.

Q. Didn't they ship it up on the boat that you went on? You went up there on the 13th day of February, 1917, on what vessel?

A. I don't know. It was one of the Alaska boats. The "Alameda," I guess.

Q. On that same boat, on your arrival at the cannery, didn't you see them unloading kerosene drums from the Standard Oil Company?

A. No sir, I didn't see it.

Q. You didn't see it?

A. No sir.
Q. You would not say that they did not, would you?
A. If I saw it, I would say I saw it.
Q. What?
A. If I saw I would say I saw it, but I didn't see it.
Q. You don't remember whether it was unloaded or not, you just don't have any recollection of seeing it, do you?
A. No. The only thing I saw up at that cannery came from Katalla, the oil.

Q. Did they unload any gasoline on the dock that day, on
141 the arrival of this vessel from Seattle, on which you went?
A. On the dock?
Q. Yes, on the dock at Katalla, at the cannery company dock—I mean the cannery company's dock at Cordova?
A. No sir, not on the cannery company's dock. I didn't see any.
Q. You didn't see any?
A. No sir.
Q. They might have unloaded it and you might not have seen it or heard of it?
A. I don't know anything about it, of course, I didn't see it.
Q. You didn't see it?
A. No sir, I didn't see it.
Q. You are positive that these steel drums had no markings on their ends at all, they were not painted either red or white?
A. No sir.
Q. You are positive of that, are you?
A. Yes, there was no mark at all.
Q. No marking at all?
A. No sir.
Q. That was about four days before you were injured, was it?
A. Yes sir.
Q. You were careful enough to be sure to get gasoline when you went in, weren't you?
A. Yes sir. I was in there to get gasoline and I got gasoline.

142 Q. And you were sure enough to get the kerosene too, wern't you—to find out which tank the kerosene was in?
A. Yes, sure I found out.
Q. And you found it out without the signs, without it being marked "Pearl Oil" or "Kerosene Oil" or anything of that kind?
A. Yes, sir, there was no mark on it.
Q. Do you know why they paint these ends white for kerosene and red for gasoline, customarily—I say, do you know why this was done up there?
A. Well, I have not seen it up there. I have not seen any white ends or red ends up there.
Q. You say you have seen it?
A. I have not seen it.
Q. But I say do you know what the reason of it is?
A. I suppose the reason was want to tell one oil from the other.
Q. So one can be told from the other?

A. I guess that is the reason; everybody knows that.

Q. On the ends of these drums you say there was no faucet. Was there any hole for a faucet? You say it was not painted over, you could see it.

A. I couldn't see any hole. When I saw there was no faucet, then I didn't look.

Q. These were steel tanks, weren't they?

A. Yes sir.

Q. Cast iron or steel, wern't they—the drums?

A. Maybe the hole was in the back end; I would not see anything for that because I could not look, because it was laying close to the wall.

143 Q. You do know that in every one of those steel drums for the holding of gasoline and kerosene, there is a hole—one above the other, on one or the other end of every one of those drums, for the purpose of putting in a faucet?

A. Yes, I have seen that.

Q. And they always leave a vent above, don't they, leave a hole——

A. Yes, there is one hole on top.

Q. Have one hole at the bottom, to put the faucet in and draw the oil out, and above that, near the top of the barrel, or near the top of the end, they put in another hole, to make a vent so that the oil can run out, don't they?

A. On the belly of the drum.

Q. On the end of the drum?

A. On the end of the drum.

Q. Now, were those there in this case?

A. I could not see any plug in the end, but I saw there was a hole on the belly, a plug there.

Q. That was up on top, a bung hole that was on top of the barrel itself?

A. Yes sir.

Q. You were not in there for four days after this occasion, after this oil was drawn out, you say, for Mr. Stensland, were you?

A. No.

Q. So that at the time Mr. Stensland, if he did draw this gallon can of kerosene or gasoline, whichever you may say it is, you don't know whether there was a faucet put in between the time

144 you were there and the time it was drawn off, or not, do you?

A. Well, there was no faucet when I was in, and I don't know after that, I was not in.

Q. I say you don't know what took place there in that interval of four days, do you?

A. No.

Q. You don't know whether there was a faucet put in or whether there was not?

A. No, because I was not in; that was only one time I was in.

Q. You do know that those holes—they were put onto racks, these drums—and those holes are in the ends of the drum, for the direct

and sole purpose of putting in a faucet and drawing out the oil, isn't it?

A. The hole there is supposed to be there, but I didn't see any hole like that when I was in. Maybe they was in the other end of the drum that was facing the wall, maybe that.

Q. You didn't look at the other end?

A. If there was any, they was in that end, because I didn't look there.

Q. I say you didn't look at the other end?

A. Because the pump was standing on the belly in the hole, so I didn't think——

Q. So you only looked at one end of the drum?

A. Sure.

Q. There might have been a faucet in the other end, might there not?

A. No, it was laying right up against the wall.

Q. Right against the wall?

145 A. Yes.

Q. Then whoever put those drums in there turned them around and had the wrong end first?

A. Yes, I suppose they rolled them right up and then twisted them around that way. That is the only way they could lay on that rack. Of course, it is only a 4 by 6 laying this way.

Q. Were there two pumps, one for the gasoline and one for the kerosene or were they interchangeable?

A. No sir, there was only one pump; changed from one drum to the other.

Q. Were there any fumes in the cabin, Mr. Sandanger, from the operation of the gasoline engine?

A. Oh, well, not much.

Q. You could smell it, could you?

A. Well, you always in a gasoline boat can smell a little gas.

Q. Smell a little gasoline in there?

A. But not anything like that.

Q. Not anything like what?

A. Not any gas, there wasn't any gas.

Q. But you could smell the fumes in there?

A. You could smell the gasoline smell, you know, that is all.

Q. If there was any leaking in the engine room, any gas in there, that would have been communicated, you could have smelled it in the cabin where the stove was, couldn't you?

A. Yes, but there was no leaking.

Q. There was no leaking?

146 A. No.

Q. How do you know?

A. I could not see any.

Q. You didn't see any. You didn't get down where the engine was, did you?

A. What is that?

Q. I say, you were not back where the engine was, were you?

A. The engine is in the same room.

Q. Well, how far away from where you were standing?

A. About four feet.

Q. Only four feet from the stove?

A. Yes, from the stove, engine is four feet, yes.

Q. Just four feet. You are sure there was not any fume of gasoline in there from the engine, are you?

A. Yes, sure there was not.

Q. But you didn't examine it to see whether there was anything leaking around the engine, or not?

A. No, I didn't, because I didn't have anything to do with the engine that day.

Q. I would like you to tell me why you would use your hand to rake up ashes, instead of a piece of board or a stick?

A. Well, because I know that there was no fire in there and I took my hand to push the ashes on one side.

Q. You knew that if the ashes were hot, or the gravel was hot, or the sand was hot, and you poured coal oil in on it and then dropped a match, you knew that was dangerous, didn't you?

A. What is that? I didn't hear it.

Q. You knew that if those embers—that if those ashes
147 had been hot and the gravel hot and you poured the coal oil in on wood and on those hot ashes, and then struck a match to it—you knew there would be an explosion, even if it was kerosene, didn't you?

A. I never seen that.

Q. I say you knew it, didn't you?

A. I know there would not be an explosion from kerosene.

Q. You knew that if you poured coal oil on hot embers, and wood on top of that, and then dropped a match in, that you were going to have an explosion, didn't you?

A. No, there would not be no explosion; all there would be would be a little flare-up; that is all there would be, with coal oil.

Q. And if a flare-up, it would flare right up, clear up out of the stove and burn your face, wouldn't it, just as everybody's experience shows—you knew that, didn't you?

A. No.

Q. You knew—that is the reason that you were testing out to see, was it not, whether the ashes were hot, was to avoid the flare-up when you touched your match to it after you poured your oil on the wood, wasn't that your reason for it, now?

A. No, the reason was because I wanted to have the ashes on one side so that I could get the wood in; that is the reason.

Q. You didn't use your hand, then, to test the fire?

A. No, I didn't.

Q. You were not trying to find out whether it was hot or not?

148 A. I was not trying to find out it was hot or not, I was trying to get—I was trying to get the ashes on one side so that I could get the wood in and start the fire; that is all I was going to do.

Q. So that you were not making any investigation to determine whether there was any heat there or not?

A. No, sir, I didn't, but when I came down with my hand everything was cold, there was no fire there.

Q. Now, how did it happen that you used your hand for the purpose of raking ashes away when you could have picked up a piece of wood, a plank, that you were making the fire with, why wouldn't you use that to strip away the ashes, rather than your hand?

A. Well, because we always used to do that when we were out fishing. I used the hand, it is handy. If there is a handy stick, we might use that, and if we can't see any we use the hands.

Q. You had pieces of plank there with which you could rake the ashes away so as to make room, and yet you used your hand for that purpose, did you?

A. Well, if there was any handy, I might take that, but you see there is always—we always used to take the hand if there is not any heat in it——

Q. The truth of the matter is that you used your hand to see whether it was hot or not, isn't that it?

A. I used my hand, but I didn't find it—I found out it wasn't hot after I——

Q. (Interrupting.) You were trying to test it to see whether there was heat there or not before you put the coal oil on it?

149 A. No, I was not trying to test it, but——

Q. You thought there was fire there, thought there might be some fire there and you would make yourself sure, didn't you?

A. No, sir. I know there was a long time before there was fire. I know it was cold anyhow, so I took my hand, and that is all I wanted to do, was to put the ashes on one side so that I could get the wood in.

Q. But you had no intention of trying to find out whether there was any hot embers there or not? That was it, wasn't it?

A. I found that out after I——

Q. Yes, but that is why you did it, wasn't it, to find that out?

A. It was not my intention to find it out.

Q. It was not your intention?

A. But I find it out after.

Q. What?

A. I find it out there was no embers or anything——

Q. But you didn't use your hand to ascertain whether there was any fire there or not, did you, or did you?

A. I used my hand. I put my hand right in the stove.

Q. You say you pushed it over, you pushed the ashes out of the way to make room for the wood?

A. Yes.

Q. And went down, put your hand in there to ascertain whether there was any fire there or not, didn't you?

A. There was no fire there at all.

Q. I say, you didn't put your hand in there to move the ashes around to see whether there was any fire or not, did you?

150 A. Well, I put ashes around when I say there was no fire at all.

Q. But I say did you do it for that purpose, to find out whether there was any fire?

A. I suppose I found that out in the same time.

Q. Yes, but were you trying to find out whether there was any fire there or not by raking the ashes away with your hand?

A. I was trying to find it out—trying to find it out——

Q. You knew there was no fire there and you were not trying for that, were you?

A. I was not going down and try to see if there was any fire.

Q. You knew there was not any fire there, did you?

A. Well, it was a long time; I knew there was not any fire.

Q. I say, you knew, before you touched it, that there was no fire there, didn't you?

A. Yes, sure I know.

Q. As a matter of fact, Mr. Sandanger, don't you know that the reason that you had this explosion was because you were mistaken and that there were hot coals there, or hot embers under the ashes and the gravel was hot, and when you poured this coal oil on there and struck a match to it, it flared up, flared?

A. No sir, there was no hot embers or anything; there was nothing in the stove at all except that——

Q. From your experience, you know that if there had been hot embers there you would have had this flare-up when you touched the match to the coal oil, don't you?

151 A. Maybe I would and maybe not.

Q. I say you knew so——

A. I say that maybe it would be a little flare-up, but it would not be any explosion.

Q. As a matter of fact, you know that the conditions are just the same if you heat the coal oil, that is, if you put the coal oil on hot embers and it becomes heated and generates a gas or vapor, that a match touched to that vapor has the same effect as a match touched to the vapor of gasoline, don't you?

A. No sir, it would not explode like gasoline.

(The court here took a recess until 1:30 o'clock this afternoon.)

Afternoon's Proceedings, Sept. 5, 1918.

OLE SANDANGER resumed the stand.

(Mr. McCord:)

Q. I want to ask you another question. I partially touched on it this morning, but I want to ask you a few more questions on this again. You came down here in July, 1917, from Cordova, did you?

A. Yes sir.

Q. And tell me the name of the man that you worked for first, or the company that you worked for, after you came down?

A. It was Mr. Clock. It was on a gasoline boat, on a purse
152 seine boat.

Q. Where is his place?

A. It is over in Tacoma: I don't know exactly.

Q. In Tacoma?

A. Yes sir.

Q. And where was the next place you worked, and for whom?

A. There was the first place I worked for a long time, you know.

Q. Tell me the people that you worked for from the time you quit in Tacoma and where was the next work you did?

A. Nilson's.

Q. Nilson's. Nilson's what?

A. Shipyard, Nilson & Kelez shipyard.

Q. Nilson & Kelez shipyard?

A. Yes sir.

Q. Have you worked for anybody else except that firm since you came down from Alaska?

A. No sir.

Q. How much money have they paid you since you came down from Alaska?

A. I don't know how much. There would be about $150.

Q. And you have worked for nobody else at all?

A. No sir, I haven't worked for anybody else at all.

Redirect examination.

(Mr. Arctander:)

Q. Clock was the one that owned this fish boat that you said you were out a couple of days on?

A. Yes.

Q. And didn't get any money for?

153 A. Yes.

Q. Will you please explain to the jury what you meant when you said, in cross examination, that after your dinner on the boat there—after your lunch, that you went ten or twelve miles off your course in hunting, explain to the jury how that was, whether you went ten or twelve miles out of your course or along the course with one or two points off, as you stated?

A. Well, it was about one point off, maybe, or so; the same way but only run different course on the compass, you know.

Q. But it was the same way that you were going along home?

A. It was the same way to Cordova, you know, but you see it was one point and a half or so off the course, instead of north——

Q. So that when you spoke of running ten or twelve miles off your course, you mean that for ten or twelve miles you went off about a point and a half on the compass?

A. Yes.

Q. From your regular course?

A. Yes.

Q. You didn't mean you wasted your time?
A. No——

Mr. McCord: I object to that as leading, Your Honor, and not proper redirect, and argumentative.

(Mr. Aretander:)

Q. When counsel asked you whether or not you wasted an hour and a half or two hours shooting ducks, and you answered yes to that, what did you mean?
A. Well, I mean we was running ordinary speed and then we were shooting ducks at the same time, running alongshore.
154 That is what I mean.
Q. Was there any waste of time there?
A. No, we didn't waste any time about it.
Q. You said that the sheet iron on that stove—counsel asked you in inches how thick it was, the sheet iron; I will ask you to state to the jury, looking at this back on an ordinary counting house pad—looking at that, the thickness of it, explain how the thickness of the sheet iron in the stove compared with that, whether it was thicker or thinner than that?
A. No, it was about the same thing.
Q. The same thickness?
A. The same thing as this, the same thing; not any thicker though.
Q. Not any thicker than that?
A. No, it was about the same.
Q. Will you tell the jury what distance there was from the bottom of the stove up to the lower edge of the door in the firebox?
A. It was about two inches, or two inches and a half.
Q. Two inches——
A. Two inches.
Q. —or two and a half?
A. Yes, about from two inches or—about two inches, yes, two inches or two inches and a half.
Q. About two inches?
A. Yes.
Q. Was it over two inches and a half at all?
A. No sir, it was not over two inches and a half.

(Witness excused.)

155 Mr. Aretander: If Your Honor please, I will offer in testimony now the deposition of Isaac Utness, taken at the offices of Messrs. Hadley & Hadley, before the reporter here, Mr. Richards, on the 4th day of February, 1918, at two o'clock. I think I will offer the whole of that. I have some other depositions in which I will offer the whole depositions, but read only at the present time what is proper in direct, because some of it may be in rebuttal. And if counsel will take this, I will read from the copies.

Mr. McCord: You can just as well put it all in. I will not raise an objection.

Mr. Arctander: Yes. Well, do you want me to put in what is for redirect too?

Mr. McCord: I would just as soon you would put it all in at one time as another.

Mr. Arctander: All right. We may do that.

Mr. Arctander here read from the deposition of Isaac Utness down to and including the following question beginning at line 18 on page 6 thereof: "During the season of 1916, what if anything had you had to do, while on board those like boats, in regard to starting fires in the stove and cooking the meals, during 1916?"

Whereupon the following proceedings were had:

Mr. McCord: I object to that as irrelevant, incompetent and immaterial.

The Court: Objection overruled.

Mr. McCord: This is the year 1916, Your Honor, the year before.

Mr. Arctander continued the reading of said deposition down to and including the following question, beginning at line 4, page 7: "What kind of stoves did they have during 1916, compared with the stove that was on this boat No. 2 at the time of the accident?"

156 Whereupon the following proceedings were had:

Mr. McCord: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Counsel continued the reading of said deposition as follows:

"A. They had—it was cheap sheet iron stove.

Q. I ask you how they compared with the stove that they had on the No. 2 at this time, whether it was the same stove?"

Whereupon the following proceedings were had:

Mr. McCord: Same objection, Your Honor.

The Court: Objection overruled.

Counsel for plaintiff continued the reading of said deposition down to and including the following question, beginning at line 5, page 8:

"Q. What was the fuel which was used for those stoves to cook on, during 1916?"

Whereupon the following proceedings were had:

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Counsel for plaintiff continued the reading of said deposition down to and including the question commencing at line 4, page 9:

"What was the condition of the wood when you had to use it, either in 1916, as a general thing, or these two days when you were out in 1917?"

Whereupon the following proceedings were had:

Mr. McCord: I object to that part of the question referring to wood in use in 1916 as incompetent, irrelevant and immaterial.
The Court: Objection overruled.

Counsel for plaintiff continued the reading of said deposition down to and including the following question, beginning at line 16, page 10:

"I will ask you what means, if any, was generally used during all of the year 1916, when you were there, while you were working for the company, in regard to starting the fire with the wood that you were furnished?"

157 Whereupon the following proceedings were had:

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.
The Court: Objection overruled.

Counsel for plaintiff continued the reading of said deposition down to and including the following question and answer, beginning at line 21, page 11:

(Mr. Arctander:)

"Q. Was the same custom generally prevailing then when you were at this island down here working for the same company?
A. Yes, the same thing."

Whereupon the following proceedings were had:

Mr. McCord: I object to that as incompetent, irrelevant and immaterial, and move to strike out the answer.
The Court: Objection overruled.
Mr. McCord: Note an exception.

Counsel for plaintiff continued the reading of said deposition as follows:

"Q. Do you remember of any time, any occasion on which a different method was used to make the fire than pouring coal oil on, was there any different way?"

Whereupon the following proceedings were had:

Mr. McCord: Same objection.
The Court: Objection overruled.

Mr. Arctander continued the reading of said deposition down to and including the question beginning at line 17, page 22, as follows:

(Mr. Arctander:)

"Q. During your experience as a fisherman, how many times do you think that you have started fires on boats—in stoves on board a boat, with the aid of kerosene, by pouring kerosene over it, or seen others do it?"

Whereupon the following proceedings were had:

Mr. McCord: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

158 Counsel for plaintiff continued the reading of said deposition down to and including the following question beginning at line 25 on the same page:

"I will ask you to state whether you ever saw any explosion caused by the use of kerosene in starting a fire when you have done or when others have done it, during your experience as a fisherman?"

Whereupon the following proceedings were had:

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

The reading of said deposition was here continued and concluded.

Mr. Arctander: I will now offer the deposition of John Jorgenson, taken at the same time—the other man who was in the boat.

Mr. Arctander here read from the deposition of John Jorgenson down to and including the following question beginning on line 20, page 40:

"What was the usual and general way in which the fishermen who had to light the fire in these stoves, or light the fire, what was the general and usual way, both those ten days and before, at other times, when you have been working in similar boats?"

Whereupon the following proceedings were had:

Mr. McCord: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Counsel for plaintiff continued the reading of said deposition down to and including the following, beginning at line 3, page 43:

"Q. Knowing what kind of fuel you had aboard that boat at the time of the accident, and at what time the dinner was cooked, and

the time when plaintiff, Ole Sandanger, went down to start the fire, and knowing the stove that was there, could you state whether or not at that time it could be possible that the stove could be hot?

A. Impossible."

159 Whereupon the following proceedings were had:

Mr. McCord: Objected to as irrelevant, incompetent and immaterial. The witness is not shown to be qualified. And asking for a conclusion.

The Court: I sustain the objection to it. The jury will disregard that last question and answer.

Mr. Arctander: I suppose I may give the answer. (Reading:) "The stove could not be hot at all. It was two hours afterwards."

The Court: The jury will not regard that, will not consider that answer, I say.

Mr. Arctander: Yes.

The Court: It is drawing a conclusion there which the jury are capable of drawing from the length of time and the character of the stove.

Mr. Arctander continued the reading of the deposition as follows:

"Q. Two hours after the fire"——

Whereupon the following proceedings were had:

Mr. McCord: I object to that.

Mr. Arctander (reading from deposition):

"A. After the fire was on, yes."

Mr. McCord: I object to that same question.

Mr. Arctander: That certainly is proper.

The Court: He has answered that already.

Mr. Arctander: I think he has, before.

The Court: He has answered that.

Mr. Arctander continued the reading of said deposition down to and including the following question beginning at line 10, page 44:

"How many times have you, during the time you have been fishing in these waters—while on board a boat, how many times have you made fires with kerosene?"

160 Whereupon the following proceedings were had:

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Arctander continued the reading of said deposition as follows:

"A. Must be thousands of times.

Q. And during your experience, have you ever seen any explosion caused by the use of kerosene in lighting a fire?"

Whereupon the following proceedings were had:

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.
The Court: Objection overruled.
Mr. Arctander: I will read it again. This is done for the purpose of interrupting the thing, ladies and gentlemen, and I will read now again.
Mr. McCord: I object.
Mr. Arctander (reading):

"And during your experience, have you ever seen any explosion caused by the use of kerosene in lighting a fire?

A. Never."

Cross-examination.

By Mr. Hadley:

The Court: Counsel, ladies and gentlemen of the jury, have a right to make objections to questions.
Mr. Arctander: That does not determine the motive.
Mr. McCord: I will let the jury pass on my motive, sir.

Counsel for defendant here read from the cross examination in said deposition down to and including the following question, beginning at line 25, page 48:

"Isn't it a fact that they didn't put the gasoline in that oil house until the fishing season began?"

Whereupon the following proceedings were had:

Mr. Arctander: I object to that as incompetent, irrelevant and immaterial.
161 Mr. McCord: This is cross examination. You must be forgetting yourself.
Mr. Arctander: I withdraw the question.
Mr. McCord: You can't withdraw it.
Mr. Arctander: I withdraw the question, Your Honor.
Mr. McCord: I won't allow it to be withdrawn.
Mr. Arctander: I will leave it to the court.
The Court: Read the question.
Mr. McCord (reading):

"Isn't it a fact that they didn't put the gasoline in that oil house until the fishing season began?"

The Court: Objection overruled.
Mr. McCord (reading):

"A. They put oil in that house long before the fishing season started."

(Short recess.)

The reading of the deposition of John Jorgenson was continued and concluded.

Mr. Arctander: I now offer the deposition of Emanuel Olson as far as it is proper in the direct case, and will indicate to the reporter what I omit in the reading. I think it would be better that Your Honor should not rule upon objections to what is in rebuttal without knowing what the defense may put in.

The Court: Very well.

Mr. Arctander here read from the deposition of Emanuel Olson down to and including line 16 on page 35 thereof.

Mr. Arctander further read from said deposition, beginning with line 16, page 36, and reading down to and including line 24 on page 38. Whereupon:

162 Mr. Arctander: Counsel, I don't know what you want with the cross examination. Will we now read that?

Mr. McCord: We will read that after you put in the balance of it.

Mr. Arctander: That is all that I will read from this witness.

The Court: You are saving this for the rebuttal, are you?

Mr. Arctander: I will save the rest for rebuttal.

Mr. McCord: Suppose you read the cross examination, all of it.

Mr. Arctander: All right. If there should be anything that fits on the rebuttal, we can mark it.

The reading of said deposition was continued down to and including line 29 on page 57, whereupon:

Mr. Arctander: That paper is returned. We will show that Plaintiff's exhibit "A" that is marked, but it ought to be marked different now.

Mr. McCord: It will go in as a part of the deposition, without re-offering it.

Mr. Arctander: Yes, but will the depositions go to the jury? They won't go to the jury. I suggest that we cut this off and make a special offer of it, if counsel admits that that is the paper that the witness marked.

The Court: The depositions do not go to the jury.

Mr. Arctander: No, that is what I thought. Have you any objection to cutting that off? We can agree that that is the paper. I suppose it is marked by the notary. I would like to have it marked Plaintiff's exhibit "E."

Mr. McCord: There is some more recross there.

Mr. Arctander: Is there? That is right. There is no ob-
163 jection to it being offered?

Mr. McCord: None at all.

Exhibit "A" attached to the deposition was detached therefrom and marked "Plaintiff's Exhibit E."

The reading of said deposition was continued and concluded.

Mr. Arctander: I now offer in evidence a portion of the testimony of Andrew Lund, starting at page 2, and I will give you a statement—I think there is a break.

Counsel for plaintiff read said deposition down to and including line 20 on page 7.

Counsel for plaintiff also read from said deposition, beginning with line 25 on page 8 and concluding the reading of the deposition.

Mr. Arctander: A stipulation was made by the attorneys and signed by them, that the affidavit of John Holland, subscribed and sworn to by him in the county of Wahkiakum, state of Washington, on the 27th day of May, 1918, before George F. Hanigan, a Notary Public residing at Cathlamet, Washington, may be offered and read in evidence by plaintiff at the trial of the above entitled action, either in direct or in rebuttal, with the same force and effect as if the statements in said affidavit contained were testified to and made by said witness John Holland under oath at the trial of said action, and with the same force and effect as if said statement had been made under oath by said John Holland on the taking of his deposition in said action, subject, however, to objection on the part of the defendant as to any of said statements so made in said affidavit by said witness John Holland that the same is incompetent, im-
164 material and irrelevant, provided, that such objection be made at the time the statements contained in said affidavit are offered and received in evidence at the trial of said action. It is further stipulated and agreed, that a portion of the statements made in said affidavit may be read during the time of plaintiff's presenting his case in chief and other portions when the plaintiff presents evidence in rebuttal at the trial of said action with the same force and effect as if said different statements had been contained in two different affidavits instead of in one.

Mr. Arctander here read from the affidavit of John Holland, as follows:

Q. That is what I want to know—you went up to Alaska, to Cordova, to this cannery?

A. Yes.

Q. To assist him?

A. Yes.

Q. To help be of assistance to him. What time did you leave here?

A. I left Seattle the 5th of April.

Q. Got there about what time?

A. Oh, I got there about the 10th.

Q. 10th of April?

A. Yes.

Q. Where was he then, with reference to being in the hospital or had he left the hospital?

A. He was out of the hospital then.

Q. He was out of the hospital then, and where did you find him?

A. Well, he was living at the cannery at that time.

Q. Living at the cannery——

A. Yes sir.

Q. —of the defendant's?

A. Yes.

Q. Now, you noticed, of course, as soon as you came there, his condition in regard to burns on his face and hands?

A. Yes.

169 Q. And leg and so forth?

A. Yes, when I saw him I couldn't hardly know him then when I first saw him.

Q. Had he had any of those scars or burns or marks when he left you?

A. No.

Q. No disfigurement on his face or on his hands?

A. No.

Q. Now, how long did you stay there with him and attend to him after you came up?

A. I stayed with him until we left for Seattle again.

Q. What time, about, was it, do you remember what time you came down here?

A. In July.

Q. In July?

A. Yes sir.

Q. You went down with him?

A. Yes sir.

Q. And you have lived with him ever since——

A. Yes sir.

Q. —up to the present. When you first came up there, what did you notice with reference to his eyes?

A. Well, his eyes were all red and inflamed, and the muscle under his eyes, they were all out of shape, his eyes was like that.

Q. With the lids turned down?

A. Turned down, you know. He had to push them up every day, you know, a couple of times a day, until he got that back.

Q. You noticed they were inflamed, red?
170 A. Yes.
Q. When you got there?
A. Yes.
Q. Did you notice whether or not he could use his eyes, whether he could see to read or anything with them?
A. No, he couldn't read.
Q. He couldn't read?
A. No.
Q. When you came down here or some time after he came down, did he go to an oculist?
A. Yes.
Q. On account of his eyes?
A. Yes.
Q. And received from him spectacles?
A. Yes.
Q. For his eyes?
A. Yes.
Q. State whether or not he has used them ever since?
A. He has used them ever since.
Q. Did he ever use spectacles before that time?
A. No sir.
Q. What have you noticed in regard to his eyes and eyesight since he came down and after he got the spectacles?
A. Well, he is a little bit better now, but at times he gets worse—when he reads he has to quit, you know, he can't read very much.
Q. Even now.
Q. Even now, no.
Q. Had he had any trouble with his eyes before—I don't know as I asked you that—before he was hurt?
171 A. No.
Q. How has his general health been since you came down from Alaska?
A. Been very bad.
Q. What seems to be the matter with him? When you first came up there, did you notice anything the matter with him?
A. Yes.
Q. In regard to his general health?
A. Yes sir, he was all scarred and sore all over.
Q. What?
A. He was all sore and his face was all sore and his hands were bad, he couldn't use them.
Q. Couldn't use them even to eat with?
A. No sir.
Q. Use a knife and fork?
A. No sir, I took care of him like I took care of a baby.
Q. And how was his health there when he did try to eat anything, after you came up there, how did that affect him?
A. Well, he was sick all the time and if he ate anything he was sick then too.

Q. Got worse?
A. Yes.
Q. Now, was that the case with whatever he ate, or was it any particular food?
A. Well, if I gave him meat or anything, he got worse. If I could give him milk or something like that, and eggs, then he was all right—not all right, but he was worse when he had meat.
172 Q. That was when you first got up there?
A. Yes sir.
Q. And while you were up in Alaska?
A. Well, it is still now too. If he eats meat he gets sick right away.
Q. He does?
A. Yes sir.
Q. Have you seen him spit up blood after he has been eating?
A. No, I haven't seen that, but I heard him complain about it.

Mr. McCord: Hold on.

(Mr. Arctander:)

Q. But you haven't seen it?

Mr. McCord: I move to strike that out.
Mr. Arctander: We don't object to that. That is all right.
The Court: The jury will disregard the answer about what she heard.

(Mr. Arctander:)

Q. When you were up there in Alaska and he would eat anything and become sick from it, how long would that last, would he get right over it or would it last for some days?
A. It would last for all the time that he would eat, but if he kept just to the food—milk and eggs, he was a little better.
Q. Now I say if you gave him anything that he got sick from, how long would that last, that he would be sick and feel exceedingly bad, more bad than usual?
A. Well, then he was sick for days afterwards.
Q. For days afterwards?
A. Yes sir.
173 Q. Now, after he came down here, did he go to any doctors, do you know?
A. Yes sir, he went to doctors.
Q. About what?
A. About his stomach.
Q. Before that I want to ask you: After he came down here and before he went to the doctor's, did he try to go to work?
A. Yes sir.
Q. What did he do? How many times before he went to the doctors did he try to go to work?

A. He tried to go to work about three times before he went to the doctor's.
Q. Before he went to the doctors at all?
A. Yes, sir.
Q. How long did he stay with his work at that time?
A. The first time he went out—he was going to do fishing—he stayed for about two or three days, two days I believe it was, and then he had to come back again.
Q. Then he had to come back again?
A. Yes.
Q. And the other two times before he went to the doctors, did he try to go to work—do you know where he went to work, tried to go to work?
A. Nilson shipyard.
Q. How long did he stay there before he had to quit?
A. He stayed there for a couple of hours and the- had to come home.
Q. Then he came home?
A. Yes.
174 Q. Now, the first doctor he went to was Dr. Torland?
A. Yes sir.
Q. And do you know the other doctor that he went to next after that?
A. I think he went to Dr. Leede after that.
Q. Leede, and then finally to whom?
A. Dr. Fick.
Q. He is the gentleman who has gone away?
A. Yes sir.
Q. Then he went to him, where did the doctor put him, did he keep him at home, or what did he do?
A. No, he told him to go up to the hospital right away; he couldn't even go home and take clothes with him.
Q. He couldn't go home and take his clothes with him?
A. No.
Q. Go right there?
A. Go right there.
Q. What hospital was that?
A. He was in a private home, in a sanitarium.
Q. In a sanitarium that Dr. Fick had?
A. Yes sir.
Q. How long did he stay at the hospital, under the doctor's care?
A. Stayed for three weeks.
Q. Three weeks; and after that what became of your husband?
A. He came home then.
Q. How was he then when he came home, or where was he, where did you keep him—up or in bed?
A. He was in bed for about three or four months afterwards.
Q. About three or four months afterwards?
175 A. Yes sir.
Q. And after that how was he?

A. Well, he got up then a couple of times a day, a couple of hours, and then he had to go to bed again.

Q. How long a time did that last?

A. Oh, that lasted for about three months afterwards.

Q. Three months more after he got up from bed?

A. Yes.

Q. When he was up in Alaska, had he had any work there before you came down?

A. What?

Q. Did he do any work up at Alaska before you came down?

A. Yes, he was watching a gate.

Q. Watching a gate?

A. Yes.

Q. That is all?

A. That is all he done.

Q. And after you came down here, how long before he could do any work? You said he tried these times, but didn't succeed. How long before he could do any work?

A. He went to work about the middle of June.

Q. About the middle of June?

A. Yes.

Q. Where?

A. Nilson shipyard.

Q. Has he worked there up to the present time?

A. Yes sir.

Q. How much of those two months and a half has he been working there?

A. Well, he has spent about two weeks every day since he
176 started to work.

Q. About two weeks of that time he has spent every day there?

A. Yes sir.

Q. How was it after he had worked there for a while, about his becoming sick and having to quit for quite a while?

A. Yes sir, he got sick once and he had to stay home for about two weeks.

Q. Two weeks at a stretch?

A. Yes sir.

Q. In bed?

A. Well, he was in bed most of the time that time.

Q. And after that time you say that it was only two weeks that he worked all the six days?

A. Yes.

Q. And the rest of the time how was it?

A. The rest of the time he went home one or two days every week.

Q. Do you know how much time he has put in, altogether, of those months and a half, working?

A. Well, I don't know exactly, but it has not been more than about a month and a half he has put in straight time.

Q. That he has put in working?

A. Yes sir.
Q. Before he went up to Alaska, how was his general health?
A. He was perfectly well.
Q. Perfectly well. Did he have any trouble to eat anything——
A. No sir.
177 Q. —before that time?
A. No sir.
Q. From what you saw about him during the time that you were down here after you came from Alaska and until he went to work in the shipyard about the 15th of June, would you tell the jury whether or not he was really able to do any work or not, from what you saw of him, his condition generally?
A. No, he was not able to do any work, because if he had I am sure he would have gone to work long before.

Mr. McCord: I move to strike out the last part of the answer as argumentative.
The Court: The jury will disregard the latter part of the answer.
Mr. Arctander: We will consent to that; that goes out.
The Court: It is purely argumentative.

(Mr. Arctander:)

Q. What did you notice about him when he tried to do anything, about the condition that he would then get into?
A. Well, he was nervous, he was shaking all over.
Q. Shaking all over?
A. Yes.
Q. How is it about that nervousness of his as to still lasting, to some extent?
A. Yes sir, he has still got that.
Q. Still got that?
A. Yes.
Q. Was he ever affected that way before he went to Alaska?
A. No sir.
Q. How is he now, at the present time, if he tries to eat
178 any meat?
A. He gets sick right away.
Q. Gets sick right away?
A. Yes.
Q. Much or little?
A. When he gets much sick he has to lay down right away.
Q. What is the only thing he can eat, you say?
A. Well, a little fish, and then I cook some rice and I have eggs and milk for him.
Q. And milk. Does he eat any vegetables?
A. Yes, a little.
Q. All kinds of vegetables?
A. No sir, just a few kinds.
Q. How about bread?
A. Well, I can give him some stale bread.

Q. Some stale bread?

A. Yes.

Q. If you give him much bread, what is the consequence, what happens?

A. He gets sick.

Cross-examination.

(Mr. McCord:)

Q. How do you happen to remember, Mrs. Sandanger, when he went to work in June?

A. Because I remember it. I was working at the same time myself.

Q. As a matter of fact, didn't he go to work on June 1st at the Nilson shipyard—what is it, Nilson and what?

A. Kelez, I think.

179 Q. Kelez & Nilson, is it?

A. Yes sir.

Q. Didn't he work down there from June 1st until June 29th and put in twenty-four days in the month of June? I will just call your attention to a memorandum, to refresh your memory, taken from their books.

A. Well, I don't think he went to work then.

Q. Well, are you certain of it? I want to ask you. You stated he didn't go to work until the 15th of June. I ask you to examine that memorandum, showing the days that he worked from June 1st to June 8th, four days, and want to know if you still want to adhere to your statement that he did not begin to work until the 15th of June, or are you mistaken about it?

A. Well, I know he went to work in June, but I could not exactly say if it was the 15th.

Q. You could not say whether it was the 1st of June or the 15th.

A. Well, I don't think he went to work the 1st of June.

Q. What is it?

A. I don't think he went to work the 1st of June.

Q. Well, I will just ask you if you can look over that memorandum, showing the statement of his time, and ask you if that will enable you to refresh your memory. I don't want you to be mistaken as to your statements as to the time he went to work.

A. No, I don't remember exactly.

Q. Examine the statement also and see if he did not work from the 1st of June until the 31st of August, seventy-one and fifteen-sixteenths days? You said he only worked about six weeks.

180 Now, as a matter of fact, didn't he work seventy-one days out of the three months?

A. Well, I know that he has been sick in the time that he has worked and laid up for two weeks and in those times he put in about two weeks straight shift every day.

Q. Do you know how much money he has received?

A. No sir, I don't exactly know that.

Q. Hasn't he received $4 a day?

A. Yes.

Q. Or $288.65 since the 1st of June. Look at that item and see.

A. That is what it says there. Of course I don't keep track of the check. They have gone out as fast as they came in.

Q. You are just positive from memory. You are giving the best recollection you have of it, but you don't pretend to be absolutely accurate, to you, as to the number of days that he worked?

A. I could not exactly say the number of days that he has worked.

(Witness excused.)

Mr. Arctander: Preliminary to calling Mr. Sandanger back for a couple of questions, I want to offer in evidence Regulation 11 of the Department of Commerce in regard to life preservers. Your Honor, I offer it for this purpose, to call your attention to the Act of Congress of the 9th of June, 1910, Section 5, "That every motor boat subject to any of the provisions of this Act, and also all vessels propelled by machinery"——

181 Mr. McCord: Wait just a moment.

Mr. Arctander: I am just calling attention to the Act of Congress.

Mr. McCord: I know it. I object to that. I don't think it is proper practice to introduce acts of Congress in evidence. That is a matter of law that the court takes judicial knowledge of, and it is not for the jury to be advised, as a matter of evidence, as to what the laws of Congress are, any more than it is proper for them to be advised of what the laws of the state of Washington are. For that reason, I object to counsel reading it.

The Court: I think that is correct. I take judicial notice of the acts of Congress.

Mr. Arctander: I understand so, but I wish to call your attention——

The Court: It is my duty to instruct the jury as to what the law is.

Mr. Arctander: What?

The Court: I say it is my duty to instruct the jury as to what the Act of Congress is.

Mr. Arctander: I only wanted to call Your Honor's attention to the provision in that section which would make it proper to introduce the rules and regulations of the Department of Commerce, because it calls attention to that, that they shall carry either life preservers or——

The Court: You are only calling my attention to this as preliminary to the introduction of the regulations?

Mr. Arctander: Yes, that is all. It says they "shall carry

182 either life preservers or life belts or buoyant cushions or ring buoys or other device to be prescribed by the Secretary of Commerce and Labor, sufficient to sustain afloat every person on board, and so placed as to be readily accessible." That is the statute, and then it is with reference to that other device to be prescribed by the Secretary of Commerce and Labor; upon that subject that I call

your attention to it, to show what Rule 11 is in that regard—in regard to life preservers.

Mr. McCord: I object to the question of the regulations, Your Honor, for the reason that they are incompetent, irrelevant and immaterial. It does not show when the regulations were adopted, or whether they were in force at that time or not.

Mr. Aretander: November 15, 1912, is the date of the circular. It is the last circular that there is upon it.

Mr. McCord: I don't think that the regulations have the force and effect of law, not made so by the statute; and, if it is a violation of the federal law that counsel is contending for, the breach of the regulations would not be a ground of negligence, it would not be a breach of the law.

The Court: Let me look at that, Mr. Aretander.

Mr. Aretander: That is Section 11. Counsel does not object to it because it is not the best evidence of the regulation, as I understand.

Mr. McCord: No, I have no objection on that ground. I am willing to concede anything that counsel can prove, without making him prove it in a technical way.

The Court (after examining): I will overrule the objec-
183 tion. I understand you are not questioning the form of the evidence?

Mr. McCord: I have no objection to the form.

The Court: Because it is not certified.

Mr. Aretander: I will read Rule 11 of the secretary of the Department of Commerce and Labor of the United States:

"11. Every motor boat not carrying passengers for hire must have life preservers or life belts or buoyant cushions or ring buoys or other device, which should be of types approved by the Board of Supervising Inspectors, sufficient to sustain afloat every person on board. This includes members of the crew, children, and babies.

"In addition the Department authorizes life preservers and buoyant cushions for motor boats not carrying passengers for hire under the following conditions: Each life preserver or buoyant cushion shall be capable of sustaining afloat for a continuous period of twenty-four hours an attached weight so arranged that whether the said weight be submerged or not there shall be a direct downward gravitation pull upon such life preserver or cushion of at least 20 pounds. If a buoyant cushion is furnished for more than one person, its capacity must be proportionately greater.

"No such life preservers or buoyant cushions stuffed or filled with granulated cork or other loose granulated material and no pneumatic life preservers or cushions will be approved.

"Planks, gratings, floorings, *oars*, small boats in tow, etc., are not approved as substitutes for life preservers, life belts, buoyant cushions or ring buoys, but wooden life floats may be used, provided their dimensions shall not be less than 4 feet in length, 14 inches in breadth, 2 inches in thickness, and made of well-seasoned white pine, or of any other wood not exceeding white pine in weight per cubic foot.

"Samples of other substitutes for the articles mentioned must first be submitted to the Supervising Inspector General, Steamboat-Inspection Service, for examination and approval."

184 OLE SANDANGER, the plaintiff, being recalled, testified as follows:

(Mr. Arctander:)

Q. Mr. Sandanger, you stated before, in your direct examination, that there were no life preservers on board that boat. I will ask you if there were any life belts?

A. No sir, there was no life belts.

Q. Were there any buoyant cushions?

A. No, sir, there was nothing of that kind.

Q. Or any ring buoys?

A. No sir.

Q. Was there any wooden float not less than four feet in length, fourteen inches in breadth, two inches in thickness——

A. No sir.

Q. And made of well-seasoned white pine, or any floats at all?

A. No sir, there was nothing, nothing at all.

Cross-examination.

(Mr. McCord:)

Q. There was a plank thrown out, that you could get onto, wasn't there?

A. What is that, sir?

Q. I say there was a plank about two inches by six, wasn't it—6 by 2? A plank, I say?

A. No.

Q. Thrown out. How big was that?

A. 2 by 6.

Q. A 2 by 6. How long was it?

185 A. I don't know, about 10 or 12 feet long.

Q. You testified a moment ago, or yesterday, the other day, and your wife this morning. I will call your attention to a memorandum showing the time that you worked or were supposed to have worked for this shipbuilding company, Nilson & Kelez's shipbuilding plant, in Seattle, and ask you to examine that and see if you desire to change your testimony as to the time that you worked and the money you received for that work, from the 25th of May on down to the 31st of August. (Handing paper to witness.)

Mr. Arctander: If you got that from them, we will concede that that is the correct thing. Of course he has only stated in a general way.

A. Yes, I worked in June, that is right.

Q. What is that?

A. I start to work in June; that is what I said.
Q. May 25th. Look at it. May 25th.
A. Then I worked—I was laying off about two weeks.
Q. You commenced May 25th, didn't you, according to that statement?
A. The first of June.
Q. May 25th, six days up to May 25th?
A. No.
Q. Well, don't you see there $24 paid you on May 25th, for six days' work? Is that right or not?
A. No, that is not—I didn't start to work before June.
Q. Well, you received $24 on May 25th, didn't you?
A. Not as I know of.
Q. Well, did you or did you not? You swore the other
186 day that you didn't begin to work until June. Now if that statement is correct you worked six days prior to the 25th of May and received on that day $24.
A. No sir, I didn't receive any $24 in May.
Q. Then you say——
A. I started to work the first of June.
Q. You say you didn't work prior to the first of June?
A. Yes sir.
Q. Then how did you get the $24 from them?
A. Well, I don't know. I don't think I got $24, as far as I know.
Q. Well, not so far as you know. I am asking you now to testify as to the fact, not your——
A. That must be a mistake.
Q. What?
A. I say that must be a mistake some way, because I
Q. You didn't do that?
A. No, I didn't work in May.
Q. Will you inquire on their books and see whether you received that money, during the noon hour, from Kelez's yard—see whether you did or not?
A. No, I didn't receive any money in May, because I was not working.
Q. Well, suppose the books show you worked and received the money, then you would be mistaken?
A. Well, it would be a mistake of them then, because——
Q. You now testify that regardless of what their books show you did not work in the month of May; is that right?
A. Yes sir, I didn't work in the month of May.
187 Q. Didn't work any time during the month of May?
A. No sir, I didn't.
Q. Then on June 1st—between June 1st and June 8th you got $16, didn't you?
A. Yes sir. That is right, I started to work on June 1st.
Q. Then during that whole time shown by that statement you worked seventy-one and fifteen-sixteenths days, didn't you?
A. The first time?

Q. Well, I say between the 25th of May——

A. I worked from the 1st to the 8th and then I laid off from the 8th to the 15th.

Q. I am asking you to examine that statement and tell me whether it is correct or not, if you didn't work, up until the 31st of August——

A. I didn't really receive so much money as that, $288.

Q. You didn't?

A. No sir; I know that for a fact.

Q. How did they pay you?

A. Well, they paid me—I guess paid me check, the same as the rest.

Q. They paid you in checks. You took the checks and endorsed them, did you?

A. Lost them? No, I cashed them, because I needed the money.

Q. Then this statement is not correct, is it?

A. I didn't work in May.

Q. You didn't work seventy-one and fifteen-sixteenths days between the 25th of May and the 31st of August, did you?

A. And the 31st of August?

188 Q. Yes, you didn't work——

A. Well, I worked——

Q. I say, you didn't put in seventy-one and fifteen-sixteenths days, practically seventy-two days, between the 25th of May and the 31st of August?

A. Not so far as I know.

Q. I am not asking you so far as you know; I am asking you for the facts.

A. No, I didn't work in May.

Q. Did you work seventy-one days between the 25th of May and the 31st of August? I will put it that way.

A. Between—what do you mean?

Q. You know what the English language means, don't you? Between the 25th of June—up until the 31st of August—25th of May——

A. That I was steady, do you mean?

Q. I don't mean that. I mean did you put in seventy-one days?

A. Seventy-one?

Q. Yes.

A. I don't know exactly how many days, but I didn't put steady, I was laying off every week one or two days.

Q. Would you say that you didn't work seventy-one days there?

A. No, I don't think I worked seventy-one days.

Q. I am asking you what the fact is. Did you or did you not work seventy-one days?

A. I worked about six or seven weeks in that time.

Q. That would be then—six or seven weeks would be about half—about forty-two days, then, you put in, did you?

189 A. Well, between forty and fifty days.

Q. Between forty and fifty days?

A. Sixty days.

Q. As a matter of fact——

A. I couldn't say exactly.

Q. —if you received $288.66, you worked more than seventy-one days, didn't you, during that same period of time?

A. Well, but I didn't receive so much as that.

Q. They didn't owe you anything else except for your wages, did they—that shipbuilding company?

A. Well, they didn't.

Q. All the money that they paid you was for your wages, wasn't it?

A. I guess so, that is all.

Q. Now then, during that time between the 20th of May, when you began to work, according to the books, and the 31st of August, there were fourteen Sundays and two legal holidays—Decoration Day and the Fourth of July—eighty-eight working days between the 20th of May and the 31st of August, and out of those eighty-eight days you put in seventy-one and fifteen-sixteenths days and received the money for it, didn't you, $288?

A. I didn't start to work in May.

Q. I say that you received $288 from them?

A. I don't think so, because I haven't counted exactly the checks, but I know I——

Q. So you were just estimating it, rather than testifying from any accurate records, were you, you just were guessing at it, weren't you?

A. Sure, I guess I haven't——

190 Q. If you worked seventy-one days, and you say you worked forty or fifty, then you were just guessing, weren't you, you just estimated?

A. I am sure I haven't received so much money as that when I have been working.

Q. How much did you receive? If you didn't receive $288.66, how much did you receive?

A. Well, I guess about between one hundred and fifty and two hundred dollars I must receive then and—I don't know exactly what money, because I haven't got the checks.

Q. So you are not trying to testify exactly, are you, then?

A. No.

Q. You are just guessing at it?

A. No, I am not trying to say just exactly, because I haven't counted every check, and every dollar.

Q. There is quite a difference between $150 and $288?

A. Yes, I suppose so.

Q. Can't you estimate it any closer than that?

A. Well, I can't guess any closer than that.

Q. You think that is pretty accurate, do you?

A. Yes, that is what I received.

Q. Has your other testimony been as accurate——

Mr. Arctander: I object to that as improper.

The Court: Objection sustained.

(Mr. McCord:)

Q. How long was this boat that you were on, did you say?
A. About 28 foot, 28 or 29 foot; 28 foot 6 inches, I guess.
Q. A little bit of a boat, wasn't it—a fishing boat?
A. No, that is a pretty good sized fishing boat, three ton.
191 Q. That is the kind you worked on?
A. Yes sir.
Q. And I believe you stated you were one of the crew, didn't you, this day?
A. How is that?
Q. You were one of the crew on the day you were hurt, were you?
A. Yes, sure, I was one of the crew, yes.
Q. And you went up there to Alaska, did you, to work on boats like that?
A. Yes, I was to fish by boat like that.
Q. That is what you hired for?
A. Yes.
Q. To work on boats like that?
A. Well, I was hired to work—they could put me in any kind of a boat that they want to when I came up there, after the fishing season started.
Q. Put you on any boat that they wanted to put you on?
A. Yes, they could put me anywheres that they wanted to.
Q. And you got your regular pay, did you?
A. Well, I don't know——
Q. For that service—I say, you got your pay for your work, didn't you?
A. I didn't get any settlement, so I don't know if I get all I got coming. I don't think I have got all I have coming.
Q. I say you were paid for working on the boats and working everywhere, you were paid $60 a month and your board?
A. I was paid $60 a month.
192 Q. And your board too?
A. Yes.
Q. That is what you earned?
A. That is what our agreement was down here.
Q. Was that agreement in writing?
A. Yes, it was in type.
Q. In writing?
A. Yes.
Q. Where is your agreement?
A. How?
Q. Where is that agreement, have you got it?
A. The agreement, I guess the union—Alaska Fishermen's Union have that agreement.
Q. You signed for——
A. I signed up in the office of the Carlisle Packing Company.
Q. Signed up——
A. I suppose Carlisle Packing Company got the agreement yet.

Q. You signed up for fishing and working on the boats and catching fish during the entire season?

A. Yes. I was signing up for to go to work in the cannery before the season, $60 a month, and then when the fishing season commenced we would fish until fishing season was over.

Q. Yes. And they were to furnish the bait and you were to catch the fish?

A. Yes.

Q. And you were to get a certain percentage?

A. Yes.

Q. You did get your percentage, didn't you? I say, you
193 did get your percentage, didn't you?

A. I didn't get any settlement with them on the fish, because I was down to the office two or three times before I went in the hospital and then asked Hawkinson how much the fish was, and then he told me—I think the average was a hundred dollars, and then I asked him that is pretty near a hundred dollars because there was nobody had less than $300 fish, and then he said that maybe $200, he said, and then he asked me next day to come up there, and wanted a settlement, and then I went down to the dock and got sick and then my wife went out about two or three days afterwards and she got $125 on a check, and that is all she got, that is all the settlement I got.

Q. You got your full pay for the season, didn't you?

A. Well, I don't know about that I got my full pay for the season, what I did have coming, because I should have $60 a month for about three or four months before the fishing season started and then I should have the average of the fishing season.

Q. The company paid your hospital bills?

A. Yes.

Q. And doctor bills?

A. Yes.

Mr. Arctander: We admit they paid them.

(Mr. McCord:)

Q. They paid your hospital bills and doctor's bills at Cordova, didn't they?

A. They paid the doctor, yes, in Cordova. There was an agreement every man who get hurt or sick, they supposed to get the
doctor and the hospital. That is an agreement there is
194 down in the fishermen union, but the company didn't——

Q. They paid all your doctor's bills and hospital bills at Cordova, and have paid all your other expenses except the doctors' bills that you have incurred down here, haven't they?

A. Well, when I was watching gate, I paid my own grub; food.

Q. The total amount of bills that you incurred was about $175, wasn't it, down here?

A. How?

Q. I say the total expense that you incurred down in Seattle amounted to $175, you say, didn't you?

A. One hundred and seventy-five?
Q. One hundred and seventy-five.

Mr. Arctander: It is two hundred and five.

A. 205. The check I got from Cordova, do you mean, before I came down here?
Q. Yes.
A. That was $250 I got in the check.
Q. But I say the total amount of the bills that you incurred for medical attendance down here amounted to something like $200, $205?
A. Yes sir. Sure. And then still I have been—maybe there is some more too, because I have been going to our doctor and paid some small amount.
Q. You only claim $175 in the complaint; that is all you ask for, isn't it?
A. Yes, that is all I ask for.

(Witness excused.)

(Mr. McCord reserved the right to offer statement as to time worked by plaintiff, and amounts received.)

195 PETER ERLENDSEN, produced as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

(Mr. Arctander:)

Q. Mr. Erlendsen, where do you reside?
A. At Fletcher Bay, Kitsap County.
Q. Over on Bainbridge Island?
A. Bainbridge Island.
Q. What is your business now?
A. Well, I am living out there; that is my home; I am making my home out there.
Q. Oh, yes. You are retired?
A. I am retired, yes. Of course, occasionally I do something in my line, just privately, for myself.
Q. I will ask you whether or not you have studied, have taken a course in analytic and manufacturing chemistry anywhere, and, if so, where?
A. I have taken a three-year course in Norway, at the technical college in Trondhjem.

(Mr. McCord:)

Q. Where?
A. At the technical college in Trondhjem, Norway.
Q. You say you took a three years course?
A. Yes.
Q. Did you ever graduate from that college as an analytic and manufacturing chemist?

A. In 1887.

Q. In 1887?

A. In the spring.

Q. Have you had any practical experience being employed in the business of analytical and manufacturing chemistry anywhere, and, if so, for how long a time and where was it and between what

196 years?

A. In Minneapolis, for the Minneapolis Gas Light Company, from 1894 to 1898.

Q. Four years?

A. For four years.

Q. State whether or not you were the analytical chemist in charge of their chemical laboratory, testing laboratory, during those four years?

A. I was.

Q. When you left there you came over here, I understand?

A. Yes.

Q. With your sick wife?

A. Yes.

Q. You resigned and came over here on account of your wife's health.

A. (Witness nods in the affirmative.)

Q. And since that time, when you have been living here, have you been engaged more or less in private experiments in connection with the business of analytic chemistry?

A. I have. In 1908——

Q. You need not specify. You have, more or less, since that time?

A. I have.

Q. At your own private laboratory?

A. I have.

Q. While you were there engaged those four years and you were the chemist of the Minneapolis Gaslight Company, state whether or not your business was in regard to testing—what objects were you testing?

A. Well, I had to test always anything that came around

197 from crude oil, which we used in the manufacturing of water gas, that is, to fractionate the water gas or the illuminating gas from.

Q. As loudly as you can.

A. Coal tars, gas for any purpose, for my own private individual experience.

Q. Amongst other things, was it your business to test crude oil that was delivered?

A. It was.

Q. Crude oil contains—what does crude oil contain, the main substances?

A. It contains all the hydro-carbons from the marsh gas up. Of course marsh gas and ketones——

Mr. McCord: I object to the question, Your Honor, as not a

proper qualifying question. He can tell his experience without going into the ingredients of crude oil. I don't think that has anything to do with his qualifications.

Mr. Aretander: I don't care to go into everything else.

(Mr. Aretander:)

Q. State whether or not it contains—what oils it contains, gasoline, kerosene——

A. It contains all the oils, the crude oil contains all the oils from the lower boiling point tractions up to the solid paraffines.

Q. To the solid paraffines. What does it contain of oils, ordinary oils?

A. Gasoline, distillate, kerosene—gasoline and distillates and kerosene.

Q. Now, what if anything did you have to do about crude oil there?

198 A. In order to make my test of fractional distillation—I subjected the crude oil to fractional distillation.

Q. And how often did you have to do that, how often did you have to examine the tank, about, when you were there, of crude oil?

A. To the best of my recollection now, it came in probably two or three—in the winter time when we used the most, about two or three times—tanks, that is, it came in——

Q. Tanks of crude oil?

A. Crude oil, yes.

Q. What was your object of your testing every one of them, why did you do it?

Mr. McCord: I object to that as not a proper qualifying question.

The Court: Objection overruled.

(Mr. Aretander:)

Q. What was your object?

A. To investigate if it came up to certain standards. I don't know the standards that they had or the agreement with the oil companies in Minneapolis Gaslight Company. I turned in the results of my investigations, and of course they settled between them, I had nothing to do with that part.

Mr. McCord: I object. I can't understand a word he says.

The Court: It *is* a little difficult to understand. Talk as plainly as you can.

Mr. McCord: You will have to talk a little slower.

(Mr. Aretander:)

Q. You haven't any tobacco or anything in your mouth, have you?

A. No.

199 Mr. McCord: I can't catch a word he says. It just all balls up.

The Court: If the jury don't understand, he may repeat it.

(Mr. Aretander:)

Q. Now, you say that the oil companies in the East furnish the gas company in Minneapolis with so much crude oil?

Mr. McCord: I object to the custom of the Minneapolis Gaslight Company, Your Honor——

The Court: It is to show his experience?

Mr. Aretander: That is all, only to show what experience he had.

(Mr. Aretander:)

Q. And, in order to see whether or not the oil they furnished was up to the test, you made these——

Mr. McCord: I object to that. That is leading, Your Honor.

Mr. Aretander: Can't you let me ask a question?

Mr. McCord: I object as leading.

(Question read.)

The Court: Objection overruled.

Mr. Aretander: I didn't finish the question.

Q. (Continuing:) —in order to find out whether the different shipments made by the oil companies—or I will waive that, I won't ask a leading question.

Why did you make each of these tanks of crude oil—why did you make these fractional distillation tests that you speak of? Why?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

(Mr. Aretander:)

Q. Go ahead.

200 A. I made these tests because I was requested to make them, as they wanted to find out whether those oils was up to certain standards.

Q. Yes.

A. I have answered that before.

Q. And how many did you say of these tanks you examined a week, on an average?

A. To the best of my recollection, during the busy reason in the winter time there would come up two or three tanks a week.

Q. Two or three tanks a week. In order to determine what this crude oil contained, what did you do, how did you separate the different oils?

A. By fractional distillation.

Q. Good gracious! We don't know what fractional distillation is. What does it mean, what did you do?

A. Well, the distillation, you take the crude oil, put it in your retort and put your thermometer in to determine the temperature, and when it evaporates you pour off the distillate and quit the distillation at every point and change the receivers. In fact, then you can separate it into certain fractions in certain boiling—that is, certain temperature at which it boils.

Mr. McCord: I move to strike out that answer as irrelevant, incompetent and immaterial.

The Court: I do not think it is necessary to go into the details of what he did.

Mr. Aretander: I didn't want him to go into detail there. I just want to know whether or not in this retort, in order to distill
201 those different things, are they subjected to that—that retort?

A. Of course it is subjected to heat.

(Mr. Aretander:)

Q. How did you get the difference—for instance, the gasoline off?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Mr. Aretander: Did Your Honor say sustained?

The Court: Sustained. It is pretty interesting, but I do not think it is material in the case.

(Mr. Aretander:)

Q. Well, in making this test and in subjecting this retort to certain heats, whatever was taken off from it, was it in the shape of gas or was it liquified?

Mr. McCord: Objected to as incompetent, irrelevant and immaterial, going into all of the details. I don't think it has anything to do with it.

The Court: I really think he has shown himself qualified to testify as an expert witness without any more, Mr. Aretander. I suppose your object is to show whether he is qualified to give an expert opinion on this subject.

(Mr. Aretander:)

Q. I will ask you to state, then, whether or not either gasoline or kerosene oil are strictly explosive, in the strict term are they explosives?

A. They are not explosive compounds nor explosive mixtures in the true sense of the word, or scientific sense.

Q. How do they get so as to explode, either one of those oils, how, in what manner do they get explosives?

202 A. You can't make an explosion except you vaporize them and mix them with oxygen or air which contains oxygen, which makes them combustible, and at a time when they are ignited of course, they almost instantly combust the whole thing, and increases the volume of the air surrounding it by the great heat.

Q. Then it is the vapors of them that——

Mr. McCord: Will you not talk a little more slowly so that I can understand?

The Court: Talk more slowly, so that we can understand you.

(Mr. Aretander:)

Q. Oils themselves are not explosive while they are in the condition of oils?

A. No.

Q. It has got to be vaporized in order to make it an element of explosives?

Mr. McCord: I object to the question as leading, Your Honor.

Mr. Aretander: I will admit that.

The Court: I think he has already testified to that.

Mr. Aretander: I think probably he did.

A. I testified to that question.

Mr. Aretander: I wanted to make it plain.

(Mr. Aretander:)

Q. Now then, the first thing, then, in regard to the temperature which is required to produce the vapors from kerosene oil or coal oil—I suppose that is the same thing, isn't it——

A. Yes.

Q. —and from gasoline? Is there any difference in the temperature in order to get them to evaporate, to make gases?

203 A. A great deal of difference.

Q. Now kerosene—in order to get gases created or vapors created from kerosene, how much of a temperature must you have in heating it?

A. Gasoline——

Q. No, kerosene?

A. Kerosene I am referring to, will in fact evaporate at any temperature, in very limited quantities, in such limited quantities that they will not explode. In order to form an explosive mixture with air——

Q. You are speaking about kerosene and not about gasoline?

A. Yes.

(Answer read.)

Q. Now, state it to the jury.

A. The temperature has to be increased to approximately—in open air, in an open vessel, where it has a chance to circulate, to approximately two hundred degrees, or above two hundred degrees Fahrenheit.

Q. Two hundred degrees Fahrenheit. How does two hundred degrees Fahrenheit compare with boiling temperature at which you would boil water?

A. Boiling water in 212.

Q. That was in open air?

A. That is in open air.

Q. In an open vessel?

A. Open.

Q. Like any stove?

A. Stove.

Q. Suppose it is a confined vessel in which kerosene is, if it is confined into a receptacle like a can, is there any difference in regard to at what temperature it will throw off vapors?

A. There is no difference in the throwing off of vapor, but in a closed can it may, because of the limited space—may have a chance to diffuse with the air better and possibly form an explosive mixture at a lower temperature than it would in the open.

Q. About what would be the limit to that downwards?

A. From my experience I would say 25 to 30 degrees lower.

Q. To how much?

A. From 25 to 30 degrees lower than the 200.

Q. Lower than the 200?

A. Yes; that would be run 170 to 175.

Q. Now, what time will it take for kerosene to form enough of such vapors as to make it explosive at either one of these temperatures that you have mentioned? About how long a time has it got to be exposed to that temperature before the gases will form in sufficient quantity so as to cause an explosion, when mixed with the air and when a match is put to it?

A. The time, of course, is not a question. There is a question of how much of it it will produce fast enough to have a chance to diffuse into the air enough to form the explosive mixture, and in a case where the air is quiet, that it is not moving away, it might not take over seven to eight minutes.

Q. From seven to eight minutes?

A. Yes.

Q. But it would take that long to form enough to form an explosive substance with the temperature you have mentioned?

A. Well, explosive, yes.

Q. Now, how is it with gasoline, in what time or at what heat—what heat is required to make vapors from gasoline, which will form an explosion, when coming in conjunction with the air and ignited will cause an explosion?

A. About 45 or 50 degrees Fahrenheit.

Q. 45 to 50 degrees. That is in an open enclosure, like an open stove, that has been mentioned here?

A. Open room or——

Q. How long a time would it require for the gases to develop in such quantity, as far as gasoline is concerned—you said kerosene even to eight minutes—how long will it take for gasoline to develop?

A. Gasoline—the specific gravity in comparison with air—of gasoline—is very much lower than kerosene, it takes a very much shorter time for it to raise up enough to diffuse.

Q. I understand, but what time does it take?

A. Oh, depending on the heat; but at the temperature of 50 or 60 degrees, or in that temperature that I have mentioned before, it probably would take from a half a minute to one minute.

Q. From a half a minute to one minute. At the temperature of from 45 to 50 degrees?

A. Yes.

Q. In the open.

A. I want to qualify that answer: If it is an open place where the air would pass over it, of course, and blow all the vapors away,
206 that would be entirely different. This is supposed to be in a room where the air is fairly quiet.

Q. Like you heard the testimony here that it was in the forecastle of a boat?

A. Yes.

Q. Which was closed except there was a hatch here at the back end. Now, in such a place, what would you say was the temperature that would be required——

A. About the same as I have stated.

Q. —at the time, up in Alaska?

A. I have stated the temperature, that is in reference to——

Q. That is the temperature that would be there. Now, if the stove in this case was cold and the contents of the stove was cold, and the stove was situated in a room like the forecastle of this boat, and gasoline was poured into the stove or onto the wood lying in the stove, would gases be produced—gases or vapors be produced sufficient to make an explosion, when mixed with the air and ignited—if the stove was cold and the contents cold and in such a forecastle as we have mentioned here?

Mr. McCord: You are referring to gasoline now, are you?

Mr. Arctander: Yes, with gasoline, yes.

A. It would.

(Mr. Arctander:)

Q. Form enough vapors?

A. It would.

Q. It would?

A. Even if the room was down to below 40, if there was
207 given plenty of time, that is, time enough for it to diffuse——

Q. Yes.

A. It eventually would form enough to make an explosive mixture.

Q. Even if the stove and the contents were cold?

A. Entirely cold.

Q. How would that be with the same condition as to the stove and the contents and the place in which the stove was situated, if it was kerosene that was poured on that, instead of gasoline?

A. It would absolutely not evaporate enough to form an explosive mixture.

Q. It would not?

A. No sir, absolutely not.

Q. If there was burning embers in the stove at the time that this stuff was poured onto it, and if it was kerosene that was poured, what heat would be necessary in the stove to cause gases enough from the kerosene to evaporate and form an explosion?

A. That depends on the quantity of the embers and the quantity of the hot material.

Q. Yes.

A. I don't know anything—the heat of that, if it was just a small ember, it would be cooled off, and because of the lack of heat that would be required to evaporate that kerosene, it would not evaporate enough, but if there was a large amount of it, or large amount of any other substance in the stove, that was hot enough, then of course it would.

Q. If it was hot up to 200 degrees Fahrenheit——

208 A. 200 degrees or more.

Q. —in that case, would you say that that kerosene would not or that it might explode?

A. It would if it was down to the 200. It would not form what we will call an explosion that would make a sudden flame, but not with great volume, unless there was a long time given for it to diffuse, and if the room was cold—the surrounding room was cold, it is apt not to be able to retain itself in the form of a vapor. It might condense.

Q. Well, it might then form a flame and it might not?

A. It might not.

Q. Depending upon the length of time from the time it was poured in until it ignited?

A. And other physical conditions which I may not know anything about.

Q. You have heard all the testimony in this case, have you not?

A. Yes sir.

Q. I will ask you whether or not, if that testimony is true, what took place there in that cabin was an explosion or merely a flame-up, as you speak of here?

Mr. McCord: I object to that, Your Honor, as not a proper hypothetical question.

The Court: Yes. If he objects to it, you will have to put the hypothetical question to him.

Mr. Aretander: I said, supposing all the testimony in this case was true.

The Court: Yes, but he may understand the testimony different from what somebody else does. You have to put it in concrete form so that we will know just exactly what he is answering.

209 Mr. Aretander: Well, I will have to have time to put a hypothetical question.

The Court: Well, we will take a recess and give you a little time. Counsel objects to it and he has a right to do so.

Mr. Aretander: The jury has heard the testimony and he has heard the testimony which is given here, almost all of it in writing.

The Court: Well, suppose the jury go out and there will not be any two of them who will agree that the testimony is exactly the same.

Mr. Aretander: Probably not.

The Court: The attorneys will not agree, I am sure, when they come to argue the case. You have got to give a hypothetical question so that the jury will know exactly what the question means, and the witness will know.

Mr. Aretander: I will try to form my hypothetical question, if counsel insist upon it.

(Short recess.)

(Mr. Aretander:)

Q. Supposing it to be a fact proven in this case, and to be true, that pieces of wood were placed in the stove in the forecastle of a boat, that right afterwards there were poured a small quantity of oil from a can on the wood, and then, right after, a match was lit and dropped in the stove, and that either as the burning match reached the wood or before it reached it, there was a strong report and

210 a sound like when the wind blows the hardest around the corner, and immediately flames shot up from the stove with such force as to set on fire the clothes of the plaintiff, who was attempting to make the fire in the stove, and to burn his face and eyebrows, and so as to explode the can containing the oil, so that it was found afterwards on the floor lying in many pieces, and this can was held from one to two feet from the stove and immediately above it, and also with such force as to throw plaintiff over towards the bunk on the other side of the stove, and so as to further burn the hair of a person standing from four to six feet away from the stove and to hurl him up through the hatchway, state whether or not in your opinion there was at that time in that cabin an explosion, or merely a flare-up, such as has been mentioned by you a little while ago?

Mr. McCord: I object to the question as incompetent, irrelevant and immaterial. It is not a proper hypothetical question, not containing the necessary elements upon which a conclusion or opinion may be based.

The Court: Objection overruled.

(Mr. Aretander:)

Q. What in your opinion—taking those facts to be true, was it an explosion that took place, or flare-up there, such as you mention, or flame-up?

A. It would be an explosion—open-air explosion.

Q. An open-air explosion?

A. Yes.

Q. What do you mean by open-air explosion?

A. Well, an explosion—an open-air explosion is an explosion that has not got the sharpness, well defined, like an explosion from
211 a cannon or gun, where it is a very sharp report. An open-air explosion would be more of a hissing sound.

Q. And by the open-air explosion you mean an explosion where the gases were not contained within the receptacle particularly, but are open to the air?

A. It was open so that it had a chance to move out and expand without forming a practical vacuum.

Q. It didn't have to form a vacuum, the vacuum was there?

A. It didn't have to form a vacuum then, there was no vacuum then. There would not be any—there might be a partial—when the gas is closed off there may be formed a partial vacuum, but there is not such a vacuum as to form the sharp report as of a gun or confined——

Q. Which would be the case while it was confined in the receptacle?

A. Yes.

Q. Suppose it to be proven in this case, Mr. Erlendsen, and to be true, that in a sheet iron stove, in the bottom of which there was a layer of ashes and sand and perhaps gravel, not over two and a half inches in thickness, a fire from broken pieces of an egg case had been maintained for about fifteen to twenty minutes; that then the fire had been allowed to go out and no fire was started in the stove at all for from one to one and a half hours or more; that at the time of attempting to start the fire in the stove again the stove was cold, the sand and ashes in the bottom of it were cold, and some broken pieces of wood from an egg box were placed in the stove, after part of the ashes and sand had been moved to the end of the fire-
212 box, by hand, and such ashes and sand proved, upon contact with the human hand, to be cold, and then a quantity of oil was poured onto the wood in the stove, from a gallon can, and the can then shifted over into the other hand and held a foot or more from the stove, or right above it, while the party attempting to start the fire with the other hand grabbed a match, scratched it on the seat of his pants, lit it and attempted to throw it onto the wood in the stove, when there took place an immediate explosion in front of him, the flames leaping from the stove up in his face, setting fire to the oil can held in his hand, or rather, to its contents, and exploding in the oil can, setting fire to his clothing and scorching the cabin, the force throwing him backward across the cabin, burning the hair of a person standing from four to six feet from the stove in the cabin, and

hurling him up through the hatchway; taking all those facts to be true, what in your opinion was the contents of the oil can that was used on this occasion, gasoline or kerosene?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial, not a proper hypothetical question, the facts stated not being all of the facts or all of the facts necessary to enable an expert to determine or form an opinion as to the nature of the oil in the can.

The Court: I think it is for the witness to say whether he can form an opinion from that statement, or not.

(Mr. Arctander:)

Q. Can you or can you not from that statement of fact form an opinion as to whether or not the contents of that oil can were
213 gasoline or kerosene? Just answer that "Yes" or "No"—can you form an opinion from this statement?

Mr. McCord: Same objection that I just made to the other question.

The Court: Objection overruled.

(Mr. Arctander:)

Q. What is your answer?

A. I can.

Q. You can. You state you can?

A. Yes.

Q. Now, will you state, taking those facts which I have just read to you to be true, whether or not the contents of that oil can used at that occasion was gasoline or kerosene?

A. Gasoline.

Mr. McCord: I object to the question for the same reason, your Honor.

The Court: Objection overruled.

Mr. McCord: I move to strike the answer out.

The Court: Motion denied.

Mr. McCord: Exception.

(Mr. Arctander:)

Q. Under the circumstances here detailed in the hypothetical question just put to you, could the contents of that can possibly have been kerosene?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial. That is the question for the jury to pass upon. He has already stated what his opinion was, and now he is asking if it is possible.

The Court: I think it is only another way of bringing out his opinion.

214 Mr. Arctander: That is all.

Mr. McCord: I object as leading.
The Court: Objection overruled.

(Mr. Aretander:)

Q. Might it possibly be kerosene?
A. No.
Q. If there had been kerosene in the can and had a kerosene explosion, tell the jury what would have happened, what would be the necessary concomitance of that, if it was kerosene?

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.
The Court: Objection overruled.

A. If it had been kerosene in that can, provided the can—now, you must state whether the can was full, half full, or the approximate quantity of oil in that can—I want to have that.
Q. Well, I don't know, it don't say. The can was brought in there that morning and we have got——
A. Is it supposed to be full?
Q. I don't know. You may put it both ways, whether it is supposed to be full or it was not supposed to be full.

Mr. McCord: I object to that. He can't testify unless it is in evidence as to what he is testifying to.
The Court: Objection sustained.

(Mr. Aretander:)

Q. Can you state certain things that would necessarily have happened, whether the can had been full or half full, or without regard to how much it was filled up or how little it was filled up, in case there had been a kerosene explosion?

Mr. McCord: I object.

215 Q. Anything, without regard to how it was.
Mr. McCord: Objected to as incompetent, irrelevant and immaterial and not based upon any of the evidence, and not a proper hypothetical question.
The Court: Objection overruled.

(Mr. Aretander:)

Q. Tell the jury if there was anything necessarily that would have happened if it had been kerosene, without regard to whether it was full or half full?
A. If it was kerosene and was sufficient quantity, it would not be gasified.

(Mr. McCord:)

Q. How is that?
A. If it was sufficient quantity of kerosene in that can, it would not

on that little explosion have gasified; it would ignite and run down on the floor and throughout the whole boat, that is, the oil would be burning, it would not be gasified and form an explosive mixture, with kerosene, because of the high temperature or quantity of heat required to gasify it.

Q. In other words, the can would not have exploded then?

A. It would—even if it is possible—the oil would have run down on the floor and formed a burning fluid in the whole boat, running out; as it was an open boat, or practically an open boat, the fluid would have run all over the boat. The gallon of oil would have covered probably the interior of that boat, burning, out in the fish room and all over it, instead of being confined into the cabin.

Gasoline, on the contrary, would have formed a vapor and
216 would have burned as a vapor, without probably not hardly any fluid touching the walls or the bottom, that is, it would have generated the heat and it would not have formed a running fluid, would not have run around.

Kerosene, on the other hand, would have been running all over the floor. The heat was not enough to gasify all that kerosene, on account of the amount of heat—the latent heat required to gasify it.

Cross-examination.

(Mr. McCord:)

Q. In making that last statement, did you take into consideration the temperature of that room?

A. I certainly did.

Q. Well, now, what was the temperature, what temperature did you assume there was, what temperature did you assume was in that room at the time of this explosion?

A. I assumed it to be about 55 to 60 degrees.

Q. Why did you assume that?

A. Because it is in a northern climate and it is on the 7th day of March, on a cold—I was born close to the Arctic Circle myself, so I know just about how the climatic conditions are on the waterfront, as I am born on the waterfront myself.

Q. Did you take into consideration the fact that there was a gasoline engine running in the same room, and had been running all day?

A. I sure did.

Q. Wouldn't it be over 50 or 60 in the room where this explosion took place, with a gasoline engine running, in an en-
217 closed space, no opening in the cabin except at the place where you go up?

A. If it was absolutely closed, without any chance for the air to move out and in, it probably would be higher. You know that in a gasoline engine, or distillate, whatever you use, you are using cooling water around the head of the cylinder, holding it down. The cylinder probably would keep at a temperature not to exceed 110 or 115 degrees. The cool air on the outside having a free chance to circulate through the hatchway on top, which has left off part of

the roof and part of the wall, would hold it down and the air on the outside, if it was in the—air outside would naturally bring it down to about sixty.

Q. So you have assumed that the temperature was 60?

A. Around 60, yes.

Q. And in order to determine that you had to draw your own conclusions from your knowledge outside of any evidence here?

A. Well, the evidence has been brought forward that it was at a certain day in March.

Q. Yes, a certain date in March, and that the hatchway was open, I mean the entrance where you come up?

A. It was stated here, to the best of my knowledge.

Q. There has been no evidence as to the temperature of the cabin at the time of this explosion, has there? You have been here all day?

A. No——

Q. You have just assumed that, then?

A. I assumed it.

218 Q. And you have based your answer to the hypothetical question upon that assumption?

A. Partially, yes.

Q. So you did not base your answer upon the hypothetical question as propounded to you by counsel but you based it upon what he told you were the facts and upon what you guessed were the facts; that is right, isn't it?

A. No, I——

Q. Without your assumption that the temperature was about 55 or 60 in this cabin, your answer would not have been the same, would it?

A. It was stated that the stove was cold.

Q. You answer the question now. I say you could not form any opinion as to what that explosion was caused by if you had not assumed that the temperature was about 55 or 60 in the cabin?

A. There was nothing stated otherwise, there was nothing stated otherwise.

Q. I understand that, but I say, you could not form any opinion without assuming, in addition to what counsel stated to you, the further fact that the temperature was about 55 or 60, could you?

A. I had no——

Q. Answer the question.

A. I had no reason to assume anything.

Q. Well, I say you did assume, in framing your answer to that question, that the temperature was 55 or 60 in the cabin, didn't you?

A. Didn't the counsel for the plaintiff state it?

The Court: Answer "Yes" or "No."

219 (Mr. McCord:)

Q. You answer my question. Don't get into any argument with me; you will get along faster and get along better if you

don't. So you tell me now that you can answer that question without assuming that the temperature was 55 or 60 in the cabin?

A. I didn't assume anything.

Q. You did assume is was 55 or 60.

A. No.

Q. You didn't?

A. At the time the answer was made I didn't have to.

Q. You didn't have to. This temperature cuts no figure, does it?

A. It does cut a figure, but he didn't—he stated the stove was cold.

Q. Never mind about that. Counsel asked you if the stove was cold, nothing was said to you about the temperature of the room or of the cabin. Now then I ask you if your answer would have been the same, regardless of the temperature of the room. Answer that "Yes" or "No".

A. That is—it would have been the same.

Q. It would have been the same. So it makes no difference whether the temperature was 200 in there, or whether it was 50 or 60; is that what you want to say?

A. Not have no difference except to the stove—he had reference to the stove being cold.

Q. Yes.

A. And the oil was poured into the stove?

Q. Yes.

A. Consequently if it was a situation that would cause evaporation—no heat in that stove——

220 Q. And you based it upon that?

A. On that stove.

Q. Regardless of the temperature of the room?

A. The room——

Q. Answer the question. You based your statement upon the temperature of the stove?

A. Of the stove.

Q. On the fact of the stove, regardless of the temperature of the room?

A. Yes.

Q. Then the temperature of the room has nothing to do with it?

A. Not in answering that question.

Q. It makes no difference whether it was 110 in there, or whether it was 30 in there?

A. It don't make any difference as far as that question that I answered, and my answer.

Q. So far as that question and your answer was concerned?

A. Yes.

Q. Now then, if the stove had been hot and there had been hot embers in there, the fire had been in the stove for some time before, a half an hour before, and the burning coal were covered over with ashes, and if there were hot gravel and hot sand in there, and then you would put the wood in and pour the oil on it, then

there would generate a vapor from that condition, wouldn't there?
A. If the stove was hot?
Q. Yes.
A. If the gravel was hot, the stove would not cut much figure.
Q. I understand.
221 A. With the gravel——
Q. But I say, assuming it was hot?
A. Yes.
Q. Assuming that the gravel was hot, and assuming that the ashes were hot as the result of the fire that had been in there a short time before, then assuming that the wood was put in there and coal oil or kerosene poured on it, then it would generate a vapor, wouldn't it, begin to smoke?
A. Assuming it was hot, it would.
Q. And then won't it burn?
A. No, it would heat it up.
Q. Yes; if it began to smoke and got hot and then you dropped a match in there, you would have an explosion wouldn't you?
A. If you get air enough into it.
Q. What?
A. If there was air enough mixed into it.
Q. I say if the stove was open, the top of the stove was open, and you had the coal oil poured in——
A. Sure.
Q. —on hot embers or hot gravel, and then dropped a match in on top of it, you would have an explosion, wouldn't you?
A. Provided there was air enough thrown into it. The kerosene does not explode in itself without being mixed with the oxygen.
Q. We understand that. The two lids were off of the top of this stove and the front of it was open and you drop your match in there, you would have an explosion, if those ashes were hot,
222 or the gravel was hot, wouldn't you?
A. Provided the air was in.
Q. Provided the air was in there. Well, assuming that the air was in, then you would have an explosion, wouldn't you?
A. Yes.
Q. And you would have the same results exactly as if it was a gasoline explosion, wouldn't you, because when the vapor comes off of the kerosene it has the same properties as the gasoline vapor, doesn't it, so far as explosiveness is concerned?
A. Yes, if there is air enough.
Q. Yes. Then you would have the same explosion in one case as in the other, but it all depends on the temperature of the gravel and sand in that stove at the time of the ignition, doesn't it?
A. It would depend on that, yes.
Q. And if you had a stove two feet long or three feet long and about 12 or 14 inches wide, if there was a layer of gravel four inches thick, and that the gravel was hot, you could get the same results from an explosion under those conditions as you would if it had been in fact gasoline, wouldn't you?
A. If I do answer——

Q. And if you have oxygen in there, if you have air in there?

A. Before I answer that question, I will inform you that I will have to qualify my answer whether I answer "Yes" or "No," either my answer——

223 Q. Give it either way you want it.

A. I say yes.

Mr. Arctander: Then qualify it, if you want to.

A. I said yes.

(Mr. McCord:)

Q. And then qualify it, if you want to.

A. Because a molecule of kerosene contains a great deal more carbon than a molecule of gasoline, that is, the gasoline molecule contains far less of carbon and hydrogen than kerosene molecules, or the molecules of the hydro-carbons which go to form kerosene, therefore it is very much more difficult to obtain a proper explosive mixture with the mixing of air into the kerosene vapor than into the gasoline vapor.

Q. Yes. Now then you don't mean to say that it would take coal oil or kerosene seven or eight minutes to generate enough vapor to explode, by dropping in a match on it, if the air was in there, it would not take seven or eight minutes for it to explode, would it?

A. If there is heat enough.

Q. I say, if there is heat enough——

A. Yes.

Q. —it would not take it, would it?

A. No.

Q. It would be instantaneous, if the heat was sufficient, wouldn't it?

A. Well, no.

Q. Don't you know——

A. No, I say no.

Q. Don't you know, from your experience, and doesn't everybody know, that when you pour coal oil in upon hot embers and

224 then drop a match on it, the explosion is instantaneous and there is not any seven or eight minutes or anything else?

A. The explosion I was talking about—it will take time from the time that the coal oil will strike either hot embers or ground or whatever you are referring to, to get hot and come up, on account of its heavy specific gravity, and then if it is very hot, excessively hot, it will not throw out enough—hasn't time enough to diffuse the air in it to make it an explosive mixture, it will be explosive on the outer edges, that is, very inflammable on the outer edges, whereas the core of that steam jet will not be inflammatory, that is, there is nothing mixed into it to form the combustion.

Q. Why is it, then, that people are constantly—not constantly, but very frequently being burned by explosions of kerosene in starting fires, because they pour oil on hot coals and then drop a match in there? That is the case. You know that they do occur, don't you?

A. Sure, I know that is the case.

Q. It don't take any seven or eight minutes to do it; you know that, don't you?

A. I don't know about the time limit. That is not brought forward to me.

Q. I am asking as to your common experience and the common experience of everybody. Don't you know that if you pour coal oil in a stove, in starting a fire, on wood that is placed in a stove where there is fire, that you are going to get an explosion, instantaneously, if you drop your match in, and don't you always do it?

225 A. No.

Q. How?

A. No, not unless——

Q. Doesn't it come instantly, depending upon the extent of the heat and also the quantity of air that is circulated, if you have those——

A. If the conditions are right.

Q. If it is hot and you have circulation of air and you drop your match on it, the explosion comes instantly, and people are burned every day or two by that somewhere, aren't they?

A. The explosion is instantaneous.

Q. Yes.

A. That is what is an explosion, it is instantaneous, but the time in which it takes to mix those gases in the natural condition——

Q. You can mix those gases sufficient to cause them to explode when you take your coal oil can and put it over the stove—by the time you get enough oil on it and then take your hand away and strike a match and put it in, that is time enough to make it explode, you have seen it do that before, yourself, haven't you, right away?

A. If it is hot enough.

Q. If you have air enough and if it is hot enough, then the explosion takes place instantly, doesn't it?

A. If it is hot enough.

Q. So it all depends on the question of the quantity of heat, doesn't it?

A. Heat and time too.

Q. Heat and air. Time——

226 A. The time——

Q. Does not your statement of seven or eight minutes as to time contradict the experience of mankind in handling coal oil?

A. It does not. I was referring to a temperature about 200 degrees.

Q. 200 degrees?

A. Yes.

Q. Now, then, when you have fire in the stove, burning embers, the temperature of the stove about the fire may be 200 degrees Fahrenheit, may be less or may be more, but where the coals are and where the coals are burning, the live—what is the temperature of a live coal in a fire?

A. Well, a red hot heat is about 800 degrees Fahrenheit, between seven and eight hundred degrees Fahrenheit.

Q. So that you might have a red hot coal in a stove, of 800 degrees Fahrenheit, and three inches away from that red hot coal you might be able to hold your hand, and you would not have over 130 or 200 Fahrenheit, and be perfectly safe?

A. You might have—you can have a candle flame right in here inside of this little hole——

Q. And the point where you determine the heat necessary to bring about the evaporation of those vapors is dependent upon the temperature of the coal and not upon the temperature of the air surrounding the coal, isn't it?

A. It is dependent on the quantity of heat.

Q. I understand that.

A. On the quantity of heat and on the——

227 Q. We will take a bed of red hot coals the size of that paper. Now then I say that the temperature of that coal is 800, we will say, this is red hot coals; three inches above it or four inches above it it might not be over 200 Fahrenheit, couldn't it, in the same stove—if they were just dead coals, not blazing, but dead red hot coals, you would have a temperature of 800, and may have 200 six inches away from it, in that same stove, wouldn't you, or what would be the difference?

A. No sir.

Q. Haven't you seen a bed of red hot coals in a stove and weren't you able to put your hand within six inches of it without burning it, isn't that the experience of everybody?

A. I would ask the learned counsel if he——

Q. Answer my question.

A. Yes. Shall I answer? I said no.

Q. It is not?

A. No. But to qualify that I will ask you if your experience has not been able to—if it had been up—I put my hand on because there is evaporation takes place from the human body and the skin will hold the heat off and I retain it for a second or two.

Q. What would be the difference in the temperature, take the stove here, two feet and a half long, or whatever the size of it was—you heard—and say the bed of coals covered one-half of that space, and that those coals were red hot, with a little bunch of ashes over it, they were not burning coals, not blazing, but they had begun——

228 A. I understand.

Q. —embers, I mean——

A. Yes, I understand.

Q. —that were read——

A. Yes.

Q. —and we will say there was a slight covering of ashes a quarter of an inch thick on top of them, what would be the difference between the temperature of the burning coal and the temperature of the stove above the ashes?

A. You mean the body of the stove?

Q. Yes.

A. The air in the stove?

Q. The inside of the stove, not the stove itself, but I mean the temperature inside, what would it be? I am asking you now for your expert opinion on that question?

A. A layer of ashes on top?

Q. Yes, say a half an inch thick, or quarter of an inch thick.

A. Oh, the difference in temperature might run as high as three or four hundred degrees.

(The court here took a recess until 1.30 o'clock this afternoon.)

Afternoon's Proceedings, September 9, 1918.

(Witness withdrawn for the present.)

229 Dr. TORLEIF TORLAND, produced as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

(Mr. Arctander:)

Q. Dr. Torland is your name?

A. Yes sir.

Q. What is your profession?

A. Physician and surgeon.

Q. What university, if any, are you a graduate of in medicine?

A. University of Christiania, Norway.

Q. University of Norway?

A. Yes.

Q. When did you graduate in medicine there?

A. 1907.

Q. How long have you practiced your profession in this city?

A. Eight years.

Q. Since 1910?

A. Yes.

Q. Before coming here, where did you practice?

A. In Norway.

Q. And where are your offices here?

A. Cobb Building.

Q. You are duly licensed to practice in this state, of course?

A. I am.

Q. Are you acquainted with the plaintiff in this action, Mr. Ole Sandanger, who sits right behind me, doctor?

A. Yes, I am.

230 Q. What time did you first see him in a professional capacity?

A. I saw him July 26th, 1917.

(Mr. McCord:)

Q. What was the date? I didn't catch it.

A. July 26th, 1917.

(Mr. Arctander:)

Q. He came there to you for examination of the injuries that he claimed to have sustained in Alaska?

A. Yes.

Q. A couple of months——

A. Yes, March 7th he had sustained some injuries.

Q. March 7, 1917, in Alaska?

A. Yes.

Q. Did you give him a thorough examination at the time?

A. I did.

Q. Did you discover upon his body any evidences of his having been injured in any way, and, if so, in what way?

A. Yes, I discovered he had quite a good deal of scars on his body. I found, on examination, that he had kel/oid scars—kel/oid scars is a scar that is usually an aftergrowth of old scars, particularly in scars after burns—and he had these keloid scars on many places of his body. Particularly did he have scars on the tip—on both—on the tip and on both wings of the nose. They were rather small however. He had two wing-shaped keloid scars taking in about two-thirds of the ball of the lower lip? He had keloid scars on the left ear, especially along the anterior border, he had brownish pigmentic scars and very tender skin the whole dorsal surface of both hands.

Q. That means the back of the hands?

231 A. Yes, a part of both hands, dorsal surface of both hands, and partly extending down on back of fingers and he has a brownish pigmentation of the skin on the face.

(Mr. McCord:)

Q. What is that word?

A. A brownish pigmentation, a discoloration of the skin, a brownish discoloration of the skin of the face, on certain spots. When I saw him he was very nervous and had symptoms of neuralgic pains many places in his body.

(Mr. McCord:)

Q. What sort of pains?

A. Neuralgic pains in his body, twitching of muscles and weakness; particularly complained of a weakness of his hands.

Q. Were there any evidences of a nervous shock having accompanied this?

A. Yes. This is in my belief evidence of a nervous shock. He also had complained of trouble with his stomach, he was unable to eat and—once in a while he had vomiting, and he had three or four times spit blood; all things that he claims had developed after this injury.

Q. What did you diagnose—he told you his circumstances?

A. Yes.

Q. From the examination of his stomach, what did you diagnose the trouble with his stomach?

A. His stomach—on the fact of what he complained, I diagnosed that he had catarrh of the stomach and probability of an ulcer.

Q. You are not a specialist in stomach diseases?

232 A. No sir.

Q. What did you do with him?

A. I referred hinr to a specialist.

Q. Whom did you refer him to?

A. Drs. Fick and Leede.

Q. And Leede?

A. Yes.

Q. I will ask you whether you could tell, from his appearance, the appearance of his being burned—what was the extent of the burning, was it small or great?

A. Well, it was a rather great extent.

Q. A great extent?

A. I consider this man came to me principally because he wanted to know whether he could do anything with his scars or not, and I advised him not to do anything, because we see that those scars, even if they are cut out, usually turn much worse than they ever was.

Q. Those keloid scars, you may tell the jury whether or not there is any tendency in them to become gradually well, or are they worse after a while?

A. These keloid cars is considered a new growth in the old scar and they usually have a tendency to increase in size, rather than to go down.

Q. What effect could you see—from the test you made of him what effect was there from this burn, for instance, on his hand?

A. As I said in my statement here, the hands, on both backs of his—I mean the skin on both backs of his hands, and extending down on his fingers, was brownish, thin and kind of that glistening skin which we get after a burn. It will never be changed

233 in any way.

Q. What effect on the working capacity of his hands, as to giving pains and so forth, or weakening the hands——

A. Depends upon the work he is doing, of course. If he is doing heavy work, labor, and so forth, going in water, in all kinds of things, he might get a cracked skin and sores, because this skin is not as resilient and as tough as the normal skin.

Q. What I meant was more whether or not it would have an influence upon weakening the hand—the strength of the hand?

A. I could not say that. I don't think it would influence the weakening of his hands except that he might get pain in the skin and he might get sores and cracks in it.

Q. Would he have the same lifting capacity with the hand, do you think, as he had before the skin was injured?

A. Yes, I think so.

Q. You think he would?

A. I think so.

Q. Now I will ask you, doctor, whether or not this injury that you found in the stomach, from his description and from your ex-

amination, that you said you diagnosed as catarrh of the stomach and perhaps ulcer of the stomach——

A. Yes.

Q. I will ask you whether or not catarrh of the stomach is often followed by an ulcer?

A. It is. It is very often.

Q. And sometimes they are also made from primary causes?

A. Yes.

Q. I will ask you whether or not the severe exposure,
234 that is, the exposure to severe burn and consequent shock which you said you found evidence of shock——

A. Yes.

Q. —whether or not such a thing would be liable to produce the injury that you diagnosed that he had in the stomach?

Mr. McCord: I object as incompetent, irrelevant and immaterial and not within the issues in this case. It is purely in the realm of speculation.

The Court: Objection sustained to the question.

Q. Supposing this man, up to the time of receiving the injuries which we have mentioned here, being burned, had been well and had experienced these symptoms which you said you found upon your examination of him after the injury, state, if you can, to the jury, what connection there would be between the injury that you found, from those symptoms, and the catastrophe by which he was burned?

A. Well, I might believe and there is no doubt in my mind what is the reason for this here; an injury of this kind is caused absolutely by this explosion, or the inhalation of gas—of the gasoline gas.

Q. The inhalation of gasoline gas——

A. Yes.

Q. —could cause such an injury?

A. Absolutely.

Q. And also nervous shock?

A. Yes sir.

Q. Now, I will ask you, doctor, if you have examined him lately?

235 A. I examined him——

Q. At my request?

A. Three or four days ago, yes.

Q. Put him through a thorough examination then?

A. Yes sir.

Q. I will ask you to state whether or not this injury—did you find any continuous evidence or symptoms of this injury to the stomach?

A. In spite of the fact that he has been under treatment——

Mr. McCord: How is that?

A. I said, in spite of the fact that this man has been under treatment by a specialist on stomach diseases, Dr. Fick, and been in the

hospital for quite a long while, been lying on his back for quite a long while, there is, in my belief, not much change. He is still spitting up blood and he is still having pains and he is still weak and he is still nervous.

Q. What in your judgment is the liability of that continuing for some time, if not for all time, in his case?

A. Well, I think that is due—from the development of this case, it has not responded very much to treatment; I think it is liable to continue for a long while.

Q. A long while?

A. Yes.

Q. Can you state how long a while?

A. I could not say.

Q. It might be for all his life?

A. Probably.

Q. And might shorten it somewhat?

A. Yes.

236 Q. I understand you are not an eye specialist?

A. No.

Q. Didn't examine his eyes?

A. I don't know anything about eyes.

Q. Didn't examine the eyes?

A. No sir.

Cross-examination.

(Mr. McCord:)

Q. You are not an eye specialist and not a stomach specialist, as I understood you?

A. Beg your pardon?

Q. You are not a stomach specialist?

A. No sir. I am not, but I am a physician besides being a surgeon.

Q. But you do not pretend to have any peculiar knowledge as to stomach troubles?

A. No specialistic knowledge, but I am treating quite a good deal of stomachs, by the way.

Q. You said he was still spitting blood?

A. Yes.

Q. Did you see him spitting blood?

A. No sir, but I took his statement for that.

Q. So that what you have said as to the spitting of blood rests entirely upon what he told you?

A. Yes.

Q. You never saw anything yourself?

A. No, I never saw blood.

Q. And never saw anything in the way of vomiting either, did you?

237 A. No.

Q. That was all——

A. That was all his statement, of course.

Q. That was in the statement of the case as he gave it to you at the time?

A. Oh, pardon me, I believe I have seen——

Q. I am not asking you what you believe, I am asking you what you did.

A. Yes.

Q. And the statement as to his weakness and his nervousness was dependent upon what he told you also, wasn't it?

A. No, no, I saw those things. I could see him trembling, I could see him twitch.

Q. You haven't seen any trembling at your last examination—did you?

A. No, I didn't see very much, but he acted nervous.

Q. You saw no physical manifestation of nervousness at the time?

A. The patient's statement is always——

Q. I am not asking that. I am asking you if you are basing your conclusion upon his statement?

A. Corroborated by the symptoms I find when I see him.

Q. And you never saw any exhibition of nervousness by him at your last examination, did you?

A. Yes, I told you I saw he was nervous.

Q. At the last time?

A. He was nervous.

Q. The other day?

A. I said he was nervous.

Q. He said he was nervous?

238 A. Yes sir, I told you——

Mr. Arctander: "I said he was nervous."

A. I told you just now that I said he was nervous.

Q. You said he was nervous?

A. Certainly.

Q. You based your idea that he was nervous upon what he told you, didn't you?

A. Well, no, not on what he told me.

Q. What did you base it on, was it anything physical——

A. That he acted nervous.

Q. How did he act nervous?

A. He was shaking, he was trembling; that is nervousness.

Q. You were just sitting down talking to him and he happened to shake and tremble?

A. Yes, certainly.

Q. And yet he is in a great deal better physical condition, his weight is greater than when you saw him, isn't it?

A. Yes, I think it is.

Q. And you think he is very much improved, don't you?

A. He is not materially improved.

Q. I say, judging from the—what do you call it, what you saw—is that objective diagnosis?—And what he tells you—just which one is subjective?

A. My diagnosis is based partly on what he told me and partly on the specific symptoms which I saw.

Q. And what is the subjective examination?

A. Subjective examination, that is——

Q. That is what he told you, is it?

A. Yes. Also on what I see on the patient when he is sitting in front of me.

Q. You saw him trembling in the last three or four days?

A. I haven't seen him the last three or four days.

Q. When did you examine him last?

A. About four days ago.

Q. I say, do you say he was trembling?

A. Yes, he was trembling. He gave the impression on me of being nervous.

Q. But you based it largely upon what he told you, didn't you?

A. I corroborated by what I saw with my eyes.

Q. How was he trembling? What do you mean by trembling, just show the jury what you mean?

A. Trembling.

Q. Show the jury.

A. I am not exhibiting anything. I am telling you he trembled.

Q. Indicate to me what you mean by trembling, show me what you mean by it?

A. I can't see that I am obliged to show you what I mean by trembling. Any normal person knows what trembling is.

Q. I want you to indicate to me whether his symptoms were trembling or what they were?

A. I will not do so unless I am ordered by the court. I am not here to exhibit anything. I will state what I found on this man.

Mr. McCord: I think it is a proper question for the witness to indicate to what extent he was trembling, and indicate it so that the jury can see it.

The Court: I do not think the doctor is required to make a physical exposition of it.

Mr. McCord: Very well, if he doesn't want to.

(Mr. McCord:)

Q. You describe this trembling, then, put it in words, tell me in words, if you won't show me by a physical exposition.

A. I can't define that trembling. It is a twitching of his muscle or the shaking of his fingers, that is all.

Q. Shaking of his fingers?

A. Yes.

Q. Just as you shook your fingers then?

A. I didn't shake my fingers.

Q. The jury will observe whether you did or not. I saw you shake your fingers, by way of illustration. You mean to tell the jury that he is in no better condition today than he was a year ago, do you?

A. Not materially improved, no.

Q. Not materially improved?
A. No.
Q. How does his weight now compare with what it was before?
A. His weight, I didn't weigh him.
Q. Did he tell you, in your examination of him, that he had worked the better part of three months down here in the shipyards?
A. He told me he had been working, yes.
Q. Well, then his condition does not interfere with or prevent his carrying on physical labor, does it?
A. Physical labor very often improves a nervous condition.
Q. Well, I say his physical condition is not such as to prevent him from working and performing his ordinary duties as a laborer, is it?

241 A. Not for a certain time, I suppose.
Q. Well, I say for the last three months?
A. No, certainly not. He has been working, consequently his physical condition has not been in the way——
Q. At least for the last three months and at the present time he is capable of performing the ordinary and usual physical labor of a man of his class?
A. He shows so himself.
Q. And, so far as the future is concerned, you know of no reason why that condition and ability to continue to work will not prevail, do you?
A. I don't know anything about the future.
Q. You don't know anything about the future?
A. No sir.
Q. You won't say, doctor, will you, that he will not be able to continue and work right straight along in the future just as he has in the last three months?
A. I don't know that, sir.
Q. I ask you what is your opinion?
A. My opinion I told when——
Q. I am talking to you now. I am asking what your opinion is now.
A. My opinion is that he has been spitting blood. I know because he has told me——
Q. I want to ask you if there is anything in his condition that in your judgment would prevent a continuation of that work?
A. There is not now?
Q. There is not now?

242 A. No sir.
Q. So far as those scars are concerned, that are on his hands, they are—what kind, what did you call them?
A. Keloid.
Q. On the hands—keloid.
A. No, the hands are not keloid.
Q. How many different kinds of burns have you?
A. First, second and third degree.
Q. What is the third?

A. The third degree is a burn that goes clear through the skin and involving the soft tissues under it.

Q. So far as the third class is concerned, has he any of the third class burns?

A. No, sir, he has not.

Q. Now then, on the second class, has he any of the second class?

A. I think he has on his lip, yes.

Q. What is the second class?

A. That is through the skin, but not involving the soft tissues under—the soft cutaneous tissues.

Q. What is the first class?

A. The second only—or the skin, I mean, only.

Q. So far as the skin only, that is the skin, the burn on his hands—on the back of his hands is the first class, is it?

A. First class, yes.

Q. That was just an abrasion of the skin?

A. Yes.

Q. It was not burned through?

A. No, it was not burned through.

Q. The discoloration will continue for a while, will it?

243 A. I think that will continue all the time.

Q. All the time?

A. Yes, sir.

Q. Doesn't that wear off, with the passage of time?

A. My experience is that it usually does not.

Q. Does not?

A. No.

Q. That is not a condition involving pain after it is healed over, is it, doctor?

A. No.

Q. There is no pain from that, is there?

A. No, sir.

Q. And with the exception of the place on his lips, just underneath his lip, and on the tip of his nose and one place on the ear, there is no pain, is there, from the burns?

A. Not except that skin on the back of his hand. That is very liable to crack.

Q. But aside from that——

A. There is no particular pain.

Q. And so far as the burns on the lips and on the nose and ear, there is very little pain from those, isn't there?

A. Very little pain now, no.

Q. What?

A. No. No, their is no pain, practically now, I don't think.

Q. No pain now?

A. No.

Q. So far as the condition of the man's burns are concerned, so far as on his hands, on his leg and on his nose, he is entirely

244 free from pain?

A. Yes, I think so.

Q. And so far as those burns are concerned, he is practically well

of that, isn't he? I mean so far as the healing over is concerned and the pain is concerned?

A. Yes, except disfigurement, of course.

Q. I understand that—aside from the disfigurement. He will suffer no inconvenience except the disfiguration?

A. No, sir, I don't think so.

Q. Now then, so far as his physical condition is concerned, so far as his stomach is concerned, you made no examination of the stomach, did you?

A. Oh, certainly I did.

Q. What did you do?

A. I examined his stomach. I didn't make any X-ray or anything like that.

Q. Did you pump it out?

A. No, I didn't pump it out. I made a physical examination to ascertain whether there was pain or whether there was a rigidity or whether there was any soreness or anything like that.

Q. And he told you there was some soreness across his stomach, didn't he?

A. Yes.

Q. You thought there was ulceration of the stomach?

A. No, I didn't say I thought there was. I said there is a possibility there might be an ulceration.

Q. But you don't give it as your opinion that he was suffering from catarrh or from an ulceration either?

A. I gave it as my opinion that he was suffering from
245 catarrh, but I didn't say ulceration, I said possibility of ulceration.

Q. How do physicians and surgeons discover whether or not there has been an ulceration.

A. They usually have to use the X-ray and pump the stomach.

Q. You pump out the stomach?

A. I sent him to the specialist for that purpose.

Q. I say that is the system, that they pump the stomach out and analyze and diagnose the contents and determine whether there is any blood there, don't they?

A. Yes.

Q. The contents of the stomach, after it is pumped out——

A. Not the contents of the stomach showing blood. The bowels usually show the blood, if there is any ulceration.

Q. Is not the usual treatment by the specialist——

A. That is specialistic——

Q. ——to pump the stomach out, and from the contents of the stomach—upon an analysis of them they are able to tell whether there is an ulceration?

A. Not only from that.

Q. That is one of the tests?

A. The main thing is the X-ray where it is——

Q. The X-ray—they fill your stomach with bismuth, don't they?

A. Barium; they don't use bismuth any more, they use barium.

Q. They have improved since on that, have they?

A. Yes, sir.

Q. Barium, that is another metal—it is a metal, isn't it?

246 A. It is a non-toxic, but bismuth is toxic.

Q. It is metal?

A. Yes, it is a metal.

Q. When this barium goes inside of the stomach, if it is inflamed—if it is ulcerated, how will the X-ray picture exhibit that?

A. The X-ray picture will usually not exhibit anything. The diagnosis is based principally on the six-hour residue. Usually the stomach is going to be emptied in six hours. We usually cannot see that, very seldom, that is, one in a hundred cases we can see it. We base this usually on the fact that—if it is emptied in six hours, we will in most cases conclude that the stomach is all right; if it is not emptied in six hours, we know there is something wrong with the motility and that the outlet of the stomach—we know that ulcers most often come at the outlet of the stomach. We then have a pretty fair evidence that we have an ulcer, but we very seldom see the ulcer, it is difficult to see that.

Q. If the test determines that there is an ulceration in the stomach, there is only one remedy, and that is to operate, isn't it?

A. Oh, no.

Q. That is the principal remedy, isn't it?

A. The principal, yes, the surgeons will say that, but the internal medics will not say that.

Q. I ask you as a surgeon?

A. As a surgeon, I will say that if there is no active

247 bleeding—if there is active bleeding, we can't operate.

Q. You finally will operate?

A. I think I will.

Q. That is the only positive cure, isn't it?

A. I think so.

Q. And that is what the profession generally think, isn't it, in these later days?

A. The internal medical men don't say so.

Q. What do you mean by the internal medical man?

A. The stomach specialist who treats these things. They put them to bed and give them medicine, and diet, and they expect and in many cases get them well with it.

Q. Aren't you wrong about that? Is not the treatment of these internal surgeons, as you call them—isn't that along the line of not operating until they are absolutely sure ulceration is there?

A. Yes, very often it is, but they do cure some cases.

Q. And in every case, if they are careful, the first they do is to pump out the stomach and take X-rays, and then they try the dieting treatment for a while, and finally they resort to operation?

A. Operation, yes sir.

Q. Dr. Fick is—you referred him to the specialist, didn't you?

A. Yes sir.

Q. He never operated on him, did he?

A. Fick was called away. He would have turned him back to me again.

Q. He didn't turn him back to you again—you didn't
248 operate?

A. No, Fick was suddenly called away to war.

Q. He was in the hospital here a year ago, wasn't he?

A. Yes.

Q. Or nearly a year ago?

A. Yes.

Q. He has not been away a year?

A. No, he was called——

Q. He was here for six months after he left the hospital, wasn't he?

A. Yes, he was.

Q. Still there was no operation?

A. No.

Q. Now, doctor, you say with the exception of possible breaking of the skin because it is thin and delicate, that he will be able to go and in all human probability perform his ordinary duties just as well as he ever did, don't you?

A. Yes, I think so, unless there should happen anything with his stomach or anything like that.

Q. You say he inhaled, you think, from what he told you——

A. Yes.

Q. —gasoline gas?

A. Yes.

Q. Well, now, you know the circumstances under which he was burned, don't you?

A. Well, I don't really recollect them. I would have to look in my chart.

Q. There was an explosion there and he was pretty badly burned. You know about what it was. In the cabin of a small
249 vessel?

A. Yes, he was making a fire in a stove on a little boat.

Q. If the kerosene had exploded and burned him, if that had been the result of a kerosene explosion, the same inhalation would have produced the same result, wouldn't it, as you think the gasoline gas produced?

A. I think it would, although kerosene is not as volatile.

Q. I understand.

A. I don't know anything about that.

Q. You do know kerosene at a certain temperature will give off fumes?

A. Certainly.

Q. And vapors?

A. Yes.

Q. And if those vapors are ignited, it causes an explosion?

A. Yes sir.

Q. And there is a result from gas on the man who produced that?

A. Yes.

Q. And would not the inhalation of that produce, in your judgment, just the same results as the inhalation of gas following a gasoline explosion?

A. I think it would. I think so.

Q. I didn't quite understand you a moment ago as to the blood coming from the bowels, from an ulcerated stomach. You say blood will come from the bowels. I don't quite understand you.

A. If there is a great amount of blood that escapes, a great deal of bleeding in the stomach, you have a patient blood sick,
250 vomit up; and it passes through the stomach and it goes in the bowels and comes out in that way.

Q. If there is an ulcerated stomach, is it possible or is it customary and usual or possible or probable that you can spit it up?

A. Oh, certainly, certainly.

Q. It will go through the bowels and up here through the mouth?

A. It can go another way, I mean.

Q. Now then, when anyone is spitting blood, that blood the average layman doesn't know where it comes from, does he?

A. No.

Q. It may come from his teeth?

A. Yes.

Q. It may come from his throat, it may come from other places?

A. Yes sir.

Q. Outside of the stomach?

A. Certainly.

Q. And the mere fact that some one happens to spit up blood occasionally is not an indication that a man has an ulcerated stomach, is it?

A. No, not as a rule. I mean not always.

Q. Now then, if you breathe or inhale burning gas, that might cause some trouble to the throat, that would account for the blood discharges of the stomach, wouldn't it?

A. Yes.

Q. Now, another thing: What is the reason why a man
251 cannot eat meat, with stomach trouble, is there any reason why he could not eat meat and yet could eat fish and fowl and vegetables, one cause him pain and another not?

A. When we have ulceration of the stomach, the meat and certain other things, in order for it to be digested they need more hydrochloric acid than other lighter things need, consequently when we get more hydrochloric acid down there in the stomach secretion, there would be more pain and they would be usually vomited up.

Q. If they have weak stomachs, they don't usually eat meat?

A. Usually not.

Q. Sometimes beefsteak is one of the things given them, isn't it?

A. Sometimes we give them beef juice, yes.

Q. Well, the extract from meat?

A. Yes.

Q. Don't they as a rule, isn't that one of the recognized treatments for stomach trouble——

A. Yes.

Q. —to either give them the juice from the meat or grind it up fine?

A. Yes. That is called Loub's treatment.

Q. The trouble about eating meat is, then, that pain that is caused from it is due to a lack of proper mastication, isn't it—proper chewing?

A. That is pretty speculative, I could not——

Q. Don't you hear of these hospotals where they treat people for stomach troubles by the diet process—don't they give them beefsteak right along, but grind it up and have it partially or make it
252 easy to digest?

A. They do it in some places, yes.

Q. Well, you know Dr. Jones' hospital in Portland, don't you?

A. Yes.

Q. That is recognized as one of the best in this country?

A. I know his hospital very well.

Q. Isn't that his treatment?

A. That is his treatment in some cases, not in all cases. That is not his routine treatment.

Q. I did-'t hear you?

A. That is not his routine treatment.

Q. Routine treatment.

A. It is not routine treatment. He does it in a certain percentage of cases, and in a certain percentage of cases he does other things.

Q. Would not the eating of fish produce the same pain as the eating of meat?

A. No, I don't think so, not as a rule, unless the fish is very fat. In a general way—we cannot judge of cases of the same thing the same way in different persons, because one person acts quite different than other persons. I am not talking about this man, you understand.

Q. How much did this man weigh when he first came to you?

A. I have forgotten now. I don't know whether I made any note.

Q. See if you didn't take a memorandum of his weight.

A. (After examining.) No, I haven't made any memorandum of his weight. I only have said he lost eight pounds.

Q. Lost eight pounds?

253 A. That he lost eight pounds from the time I saw him or had——

Q. That is, he had lost it from what?

A. He lost it from July 26th, when I saw him first, until October 15th, when I saw him, he lost eight pounds during that time.

Q. You haven't any knowledge as to what his weight was?

A. No, I haven't.

Q. Isn't that a little unusual, doctor, not to weigh them?

A. No, I don't have the weight in my office.

Q. How do you know he lost eight pounds?

A. He told me so.

Q. He——

A. That is all.

Q. You didn't get it as the result of weighing him yourself?

A. No, I usually tell my patients to weigh themselves.

Q. How did he look at that time as compared with now, was he thinner?
A. Not materially.
Q. Just about the same?
A. Just about the same.
Q. He weighs about 180 pounds now, doesn't he; five feet seven inches tall?
A. I don't think he weighs 180 pounds.
Q. Well, about what would he weigh, just give us your judgment?
A. I should judge about 165 or 70.
Q. If he weights 175 or 180, you are not a good judge, are you?
A. No, I probably am not.

254 Redirect examination.

(Mr. Arctander:)

Q. Doctor, may I ask you one thing: Counsel asked you if he spit blood, whether that could come from anything else besides ulceration of the stomach?
A. Could come from the lung.
Q. You state it could. When you find spitting of blood, then, find the symptoms that you had in this case, would that indicate anything to you as to where that blood came from, to spit blood?

Mr. McCord: I object to that as not proper examination. It is purely speculative.
The Court: Objection overruled.

(Mr. Arctander:)

Q. Would it?
A. Of course, we never base a diagnosis of ulcer of the stomach, or any stomach trouble, alone from the fact that a patient tells me so. We always corroborate them with other symptoms, from that which we find. On this man, I found evidence which led me to think that this came from the stomach.
Q. That the blood came from the stomach?
A. Yes.
Q. There is another question I forgot to ask you: Can you tell the jury whether or not, from the burns of which you found evidence there on him—tell the jury whether or not the burning which he must have been subjected to from those—what you found evidence of——
A. Yes.
Q. —whether or not it was connected with great or excru-
255 ciating pain, or not?
A. Well, when he first got them, he must have had lots of pain; we always get lots of pain with those things.
Q. And lasting for some time?
A. Lasting for quite a long while, yes, until they all heal up.

(Witness excused.)

PETER ERLENDSEN resumed the stand.

Cross-examination (resumed).

(Mr. McCord:)

Q. You have been discussing about this stove, and you say if it is an open stove or a contracted or open space or contracted space——

A. I didn't——

Q. About the stove, what was the size of the stove that you had in mind?

A. I testified to a stove about a foot by two feet.

Q. I ask you what was the size of the stove or what your view of it was, upon which you base your testimony?

A. The stove that has been testified to here.

Q. Well, what was it?

A. It was a stove about a foot—one foot wide and two feet long and about eight inches deep, about two inches of sand in the bottom, and the firebox about six inches wide, something like that. I think that was testified to.

Q. That is upon what you based it?

256 A. Yes; two lids on top.

Q. You say you will get an explosion if you have a proper amount of heat and the proper circulation of air coming in contact with the ignition, that will produce an explosion in a closed place. What did you mean by that?

A. That is in an enclosed place in the stove.

Q. That is, you call that——

A. Take the two lids off, which has been testified to——

Q. And you don't call an enclosed——

A. I would not call that a closed——

Q. —stove, in a closed drum?

A. There is more open air, there is no confinement, there is nothing that restricts it there. It has to be the comparative size of the opening to the stove chamber and the amount of explosive is very large in these cases, and there is no barrel or anything for it to pass through, so it has no extra compression.

Q. What would be the difference between an explosion in that stove and one on the outside, on the floor, where you had it outside in the cabin?

A. Not very much, not very materially different.

Q. Not any material difference. In order to make a more violent explosion, it has to be more contracted?

A. Confined.

Q. Now, what do you mean by an explosion, something that breaks things all to pieces, sufficient to smash a coal oil can?

A. An explosion is the act of excessive quick expansion of gases.

Q. That would mash a coal oil can, would it not, that is,

257 the explosion from the gas in the stove would——

A. On the outside?

Q. Yes.

A. You mean the explosion from the outside hitting the sides of it?

Q. Yes. The dishes were thrown around there, as I understood it, and broken. Would that be sufficiently strong to break the can, or cause the smashing of the can, throwing it against the wall?

A. If thrown against the wall, that is, if the oil can was thrown against the wall, the act of hitting the solid body might crack it.

Q. Then the heat from the explosion would generate the gas and convert that coal oil or gasoline into an explosion, wouldn't it—would make it explode?

A. Gasoline would—the heat would be sufficient, if it was gasoline, to evaporate practically all of the contents of that can.

Q. If it spread out on the floor, it would evaporate at once, as I believe you said, did you not?

A. Spread on the floor or anywheres in the air, whatever was retained on the floor.

Q. What I am getting at is this: If that oil was spilled out of the can onto the floor—you said ran on—it was cold——

A. Yes.

Q. —it would not explode or flare up so quickly, that is what you said, didn't you?

A. Yes, it would not.

Q. But the heat from the explosion in the stove would be
258 sufficient to cause the vapor—with the coal oil out on the floor, to make the vapor and make it ultimately explode, wouldn't it?

A. No sir, it would burn on the floor.

Q. Burn on the floor. Burn the oil on the floor, would it?

A. On the floor. It would run——

Q. As the oil began to burn, wouldn't it finally make a flare-up?

A. No sir; it would consume it as fast as——

Q. You think it would do that, have that effect?

Mr. Arctander: That is kerosene?

A. That is kerosene, yes.

(Mr. McCord:)

Q. Now, then, so far as gasoline, you say that would flare up all at once?

A. Practically all at once.

Q. Now then, how long would it take this fire to continue—how long would this burning inside of the cabin continue; if it was gasoline? Almost instantaneously, wouldn't it?

A. No, not exactly instantaneously.

Q. What?

A. Not exactly instantaneously.

Q. As soon as it began to explode and flare up and burn, it would not take it over a few seconds to burn up, would it—gasoline?

A. The question is if there was air enough in that cabin to fulfill the function of combustion.

Q. Well, you said a part of the top of the cabin was gone, and the

stairway—I don't know what you call it—the companion-
259 way, isn't it?

A. Yes.

Q. That was all open?

A. That was open.

Q. Now, with that in view—with those conditions as they were then on the 7th of March, if that was gasoline it would have burned out very quickly, wouldn't it?

A. That as I say—quickly, yes, quickly, but there would be a time there; not instantaneously, no.

Q. Ten or fifteen seconds to do it, or could be?

A. No, not ten or fifteen seconds.

Q. Not that long?

A. Not that quick.

Q. How long?

A. It probably would take a half a minute or something like that.

Q. Possibly a half a minute?

A. Yes sir.

Q. How long would it have taken coal oil to burn out if it was scattered on the floor that way and all aflame?

A. From my personal experience with handling coal oil and burning it——

Q. I am not asking for any specific instance. I am asking your opinion as an expert, as to how long it would take?

A. From three to five minutes, at least.

Q. If it was coal oil?

A. Coal oil, yes; that is the least it would take.

Q. Now, if it was coal oil and it took from three to five minutes, wouldn't you think that if it did take five minutes to burn it
260 out, and you had to put the top on the stairway, on the cabin, and close it up and smother it out, that it must have been coal oil instead of gasoline? If, as a matter of fact, just assuming as a matter of fact that it did take about five minutes to put it out, and then you could only put it out by closing the door, putting down the hatch, shutting off the air and smothering it out, after it had burned for some little time, say three to five minutes, wouldn't you then think that that was a fair reason for assuming that it must have been kerosene and not gasoline?

A. No.

Q. Why not?

A. Because, as I say, it is a question has the gasoline got air enough in there to consume it in the first place for the combustion.

Q. You say it would take the gasoline a half a minute to burn out under those conditions. Now, then, if as a matter of fact it took five minutes for the flames to be put out, wouldn't you think that it must have been kerosene instead of gasoline?

A. If it took—extended along the length——

Q. And showing that it was necessary to close down the hatches to smother it out, wouldn't you think it was probable the long combustion was due to its being kerosene rather than gasoline?

A. The longer the combustion would indicate kerosene, the longer the combustion——

Q. That is exactly the question.

A. But——

261 Q. You put it just right. The longer the combustion. The combustion would be longer on kerosene than it would with gasoline?

A. Yes.

Q. And if it did take longer to burn out—if the combustion was greater and was longer, and you had to close the hatches down to put it out, then there would be some reason for assuming that it was kerosene rather than gasoline, wouldn't there, if, as a matter of fact, it did burn longer and did take longer to burn it up?

A. The kerosene would burn down on the floor——

Q. What?

A. It will be burning down on the floor, not up on the walls.

Q. But it would be flaming up, wouldn't it?

A. Flaming—I should be——

Q. It would be as high as your waist, or something of that sort; kerosene gets afire and when it is hot enough it will burn, won't it?

A. If it gets hot enough.

Q. Yes.

A. If it gets hot enough.

Q. And if you have heat in there sufficient to burn a man, and the whole thing in flames, or an explosion, the kerosene or anything else on the stove would burn, would it, be heat enough to burn it?

A. If you have heat enough, if you apply a sufficient amount of heat.

Q. In this little thing 10 by 6, 6 feet wide, four or five
262 feet wide and eight or ten feet long, that is a small place, isn't it?

A. Yes, it is not a large place.

Q. And if you had an explosion from the stove, a flare-up, sufficient to burn a man standing up, causing the explosion, just as the witnesses said, you would have the whole inside of it aflame, wouldn't you, and that would set fire to any kerosene that was on the floor, wouldn't it?

A. Most likely it would.

Q. Sure, wouldn't it? How long have you been where you say you live?

A. I live over at Fletcher Bay, Kitsap County.

Q. How long have you lived there?

A. Oh, I have lived there twenty years.

Q. You are a farmer, are you?

A. Well, I don't do much farming.

Q. What do you do?

A. Oh, I am living there, making my home and doing whatever I like.

Q. How do you make a living? I don't mean to be personal about it, but what occupation are you engaged in?

A. Well, now, it is mighty hard to repeat to you whatever I have done in twenty years.

Q. I mean what are you doing now for a living?

A. Well, I am in here right now.

Q. Yes, testifying as a witness, as an expert.

A. At this time I am, yes. Otherwise I——

Q. You are making some money as an expert witness here, making a living, are you?

263 A. This is the first time I have been called on that line.

Q. Have you had any experience in twenty years in the handling of gasoline and kerosene?

A. I have.

Q. I mean in a business way?

A. I haven't been employed by anybody else, but I have done it because I was working on a metallurgical question in 1909 and I made a discovery which I am not going to tell you which it was even.

Q. I won't ask you that——

A. And I happened to see in the papers a notice, from some parties at the University of California, something nearly similar to mine, but not exactly the same, and it involved the use of oils.

Q. Well, you would properly be called an inventor, then, would you?

A. Well, I might in certain lines.

Q. You are getting a patent, are you?

A. No, I didn't.

Q. In other words, your experience in the handling of gasoline, in a commercial way at least, or in a business way, terminated in 1898, at Minneapolis?

A. Sure it did.

Q. And you have had no other practical or business commercial experience in the handling of either gasoline or kerosene since that time?

A. For somebody else, no.

Q. The only way that you have used it is in connection with your invention that you are now perfecting?

(No response.)

264 Q. Well, I don't want to know what it is, because it might rob you and would not benefit me.

A. But gasoline and kerosene never changes their properties, they are chemical properties that don't change. Their properties will extend forever.

Q. I don't understand what you mean by saying it would take seven to eight minutes for kerosene to throw off vapor sufficient to cause an explosion when it would come in contact with a match-lighted match. I don't know that I quite understand you. Will you tell me what you mean by saying it would take eight minutes.

A. Did you listen to the question?

Q. Well, I may be duller than you, but I would like for you to tell me, again, if you said it. I said I didn't understand it, and I will be obliged to you if you will give it to me.

A. When I had told you——
Q. All right.
A. It is in answer to showing that I answered a certain question.
Q. I am asking about a certain statement. I am asking you to state what was meant by that seven or eight minutes. Go ahead and do it.
A. It was meant that under the condition that was propounded by the question that was plain, it would take about that time before it had ability to accumulate enough and diffuse with the air enough to make an explosive mixture.
Q. What you meant was that it would take seven or eight minutes to generate it in a cold stove?
265 A. In a cold stove or a stove up to 150 or 200 degrees Fahrenheit.
Q. And that assumed that there was no hot gravel or anything else in there?
A. Below that temperature.

(Witness excused.)

Mr. Arctander: We rest, Your Honor.
Mr. McCord: I would like to ask Mr. Sandanger a question before you rest.

OLE SANDANGER, the plaintiff, being recalled for further cross-examination, testified as follows:

(Mr. McCord:)

Q. Mr. Sandanger, how long did you say you had worked on this particular boat?
A. Two days.
Q. Two days. That was the third day before the accident, was it, or the fourth day?
A. Oh, I thought you meant down here on the Sound when I came down.
Q. No, up in Alaska, on the boat on which you were hurt?
A. A little over two weeks, between two and three weeks.
Q. What were you doing on the boat?
A. I was towing piling part for the construction.
Q. You ran the boat part of the time, did you? I mean you steered it? You knew how to do it, did you?
A. Well, I was running the engine that time.
Q. Running the engine?
266 A. Yes.
Q. During practically all of the two weeks?
A. Yes.
Q. Did you have to take your orders from Mr. Stensland, the master of the vessel?
A. Not then.
Q. Who did you take your orders from?
A. Of course, John Jorgenson was captain.

Q. You took them from John Jorgenson?
A. Yes.
Q. And it was on this same boat?
A. It was on the same boat.
Q. And you had been working there about two weeks?
A. Well, between two and three weeks, I don't know exactly, on that date.
Q. And those services came within your general employment, did they?
A. Yes it was company employment.
Q. This boat was owned by the Carlisle Packing Company, was it?
A. Yes sir.
Q. And it was within the line of your employment that you did this engine work on the boat—what were you doing on the day that you were hurt?
A. The day I was hurt?
Q. Yes.
A. We was out on the bay, Buswell Bay, after some sand for the company.
Q. But you had to take your orders that day from Stensland, did you?
267 A. Yes, he was the boss that day.
Q. And you did whatever he told you, you did whatever Stensland told you?
A. Sure I did.
Q. And when he told you to go down and wash the dishes and clean up the vessel, you went, did you?
A. Yes, I went when he told me.
Q. That was a part of the duties, was it?
A. Sure.
Q. Running the engine was a part of your duties, if the captain had told you to do it?
A. What did you say?
Q. If the captain had told you, you would have done it?
A. Yes, sure, I would have done what he said.

(Witness excused.)

Mr. Aretander: We rest.
Mr. McCord: Your Honor would excuse the jury for a while?
The Court: The jury may retire to the jury room.

(The jury was later excused until half past nine o'clock tomorrow morning. Whereupon the following proceedings were had in the absence of the jury:)

268 Mr. McCord: If the court please, I now move the court, first, for a nonsuit and dismissal of this action, upon the grounds and for the reasons that the proofs fail to show any ground of negligence upon the defendant that would justify the verdict of the jury for any sum whatever, and upon the further ground that

the allegations of the complaint are in no manner sustained by the proofs.

Second. If the motion for nonsuit be not granted, in the alternative I move the court for an order taking this case from the jury and directing a verdict in favor of the plaintiff and against the defendant for the sum of $175, and no more; the evidence now before the court showing that the plaintiff, if entitled to recover anything, must, under the law, be limited to the recovery of $175, the amount of his doctor bills and hospital bills sued for in the complaint, the wages of the plaintiff having been paid, according to the testimony, up to the end of the year, while there is no evidence to show what those wages were for the life of the contract, and the doctor bills and hospital charges in Cordova, at the place where the accident occurred, having been paid and shown affirmatively to have been paid by the defendant.

(Argument.)

(Court adjourned until 9:30 o'clock tomorrow morning.)

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(Further argument.)

The Court: There is some question in my mind as to whether this man is a seaman or not. I think, as long as we have proceeded so far with the trial as we have, we will go ahead with it.

Mr. McCord: What is that?

The Court: I say, we have taken so much time in putting the evidence in in this case, I think we had better let the evidence go to the jury in order that we may have a final determination of it. If a verdict is rendered, the question can be raised just as well as it can at the present time. So I will deny the motion.

Mr. McCord: Note an exception.

The Court: It seems to me the question is whether this man is a seaman, or not, and, if he is, under that late decision of the Supreme Court of the United States——

Mr. McCord: Your Honor——

The Court: I will hear the argument on the other side. I will overrule the motion.

Mr. Arctander: I think I can convince Your Honor, under that contract, that that is not a maritime contract, when the time comes.

Mr. McCord: Your Honor will not deprive us from raising the question at the conclusion of the case, at the conclusion of the evidence?

The Court: No. It goes to the right of recovery. You may make it as a motion notwithstanding the verdict.

Mr. McCord: After we finish our case, I do not want to be
270 precluded from making the same motion again.

The Court: No, you can make the same motion at that time.

Mr. McCord: Exception.

The Court: Bring in the jury.

270½ THE DEFENSE.

271 The jury having returned into the court room, and counsel for defendant having made an opening statement to the jury, the following proceedings were had:

Mr. Hadley: We offer in evidence the depositions, first of John Peterson and Iver Stensland. They were taken under stipulation of counsel.

Mr. Hadley here read from the deposition of John Peterson down to and including line 19 on page 9 thereof, whereupon:

Mr. Aretander: I object to that as incompetent, irrelevant and immaterial, and not for the witness to say what anyone could do.
Mr. Hadley: It is a matter of common knowledge.
The Court: Overrule the objection.

Mr. Hadley continued the reading of said deposition down to and including the following question beginning on line 2, page 10: "Did you ever see him taking the tops off, to determine whether there was gasoline or kerosene in it?" Whereupon:

Mr. Aretander: That is objected to, because there is no testimony of the kind, that he took the tops off.
The Court: I did not hear the question.

(Mr. Hadley again read the question, whereupon:)

Mr. Aretander: There is no testimony of Mr. Jorgenson that he did do anything of that kind. That is my objection.
Mr. Hadley: So far as that is concerned, it is orginal testimony.
The Court: Objection overruled.

The reading of said deposition was continued down to and including line 18 on page 11, the discussion between counsel
272 shown in the deposition beginning with line 19 on page 11 and ending with line 8 on page 13, not being read to the jury. Whereupon the reading of the deposition was continued and concluded, the discussion between counsel, appearing on pages 16 and 17, not being read to the jury; the cross examination being read by Mr. Aretander.

The deposition of Ivar N. Stensland was offered in evidence by counsel for defendant and read down to and including line 25 on page 55 thereof, when Mr. Hadley introduced in evidence the chart offered in connection with the deposition, same being received in evidence without objection and marked "Defendant's Exhibit 1."

Thereupon Mr. Hadley offered in evidence the tide tables offered in connection with said deposition, which were also received in evidence, without objection, and marked "Defendant's Exhibit 2."

The reading of said deposition was continued and concluded.

Mr. Hadley: We offer in evidence the deposition of Nels Hawkinson.

The deposition of Nels Hawkinson was here read in evidence.

Mr. Hadley offered and read in evidence the deposition of Hans D. Sorvick, down to and including the answer to Interrogatory 6, whereupon:

Mr. Aretander: Now, I object to "State whether or not you are familiar with the coal oil drums used at the cannery of the Carlisle Packing Company in Cordova, Alaska. He says that he has worked for them eight months for three seasons, and I enter an objection to that as incompetent, immaterial and irrelevant, not limited in time, not even confined to 1917.

The Court: I will overrule the objection.

Mr. Aretander: Exception.

Mr. Hadley continued the reading of said deposition down to and including Interrogatory 8, whereupon:

Mr. Aretander: Same objection, as to time, to question 8, and also to 9 and 10, so I do not need to take up the time.

273 The Court: All right.

Mr. Aretander: Exception.

Mr. Hadley continued the reading of the deposition down to and including the answer to direct interrogatory seventeen, whereupon:

Mr. Aretander: I would have to object to questions eighteen and nine*t*ween—"State whether or not you are familiar with the methods used for storing oils and gasoline in the Carlisle Canning Company during the year 1917." Not limited in time, *or at* before the accident. And the next question: "Give your opinion of that method"—well, I will come to that afterwards. I have objections to that.

The Court: Objection overruled.

Mr. Hadley here read direct interrogatory eighteen and the answer thereto, and direct interrogatory nineteen, as follows: "Give your opinion of that method with regard to the prudence and carelessness thereof?" Whereupon:

Mr. Aretander: We object to that, first, for the reason we objected to the former one, that it is not limited——

The Court: I sustain the objection.

The Court: We make an offer to show by this witness the statement contained in his answer to question nineteen.

The Court: That is the question I sustained the objection to.

Mr. McCord: Yes, in the deposition of Hans D. Sorvick we make, as our offer, the statement contained in the answer to interrogatory number nine*t*ween.

Mr. Aretander: I want the further objection to go into it, that the answer shows comparisons, and it is not proper, with other canneries. So that the objection will be full.

274 Mr. Hadley: That takes twenty along with it, doesn't it?

Mr. Aretander: Yes.

Mr. McCord: Read the questions and let him object. Read question twenty.

Mr. Hadley (reading): "What time?"
Mr. Aretander: I don't care about it.

Mr. Hadley continued the reading of said deposition down to and including Interrogatory 21, whereupon:

Mr. Aretander: The same object- as to the other, as to time.
The Court: Objection overruled.
Mr. Aretander: And incompetent, irrelevant and immaterial.

Mr. Hadley concluded the reading of said deposition.

Mr. Hadley offered in evidence the deposition of Charles Foyston, and read from same down to and including interrogatory 14, whereupon:

Mr. Aretander: Objected to as immaterial and irrelevant whether anybody else went any oftener to the oil house than he.
The Court: I do not know, myself, how it would be material. I do not know whether what follows will make it material. Overrule the objection.

Mr. Hadley continued the reading of said deposition down to and including Interrogatory 15, whereupon:

Mr. Aretander: Objected to as before, because it is not limited as to time.
The Court: Objection overruled.

Mr. Hadley continued the reading of said deposition down to and including the words "four inches" in the answer to Interrogatory 19, whereupon:

275 Mr. Aretander: I would like to make the same objection as to time, no time being shown, and I want to call your attention—I think it is proper that you should know it—that not only have our witnesses whose depositions have been taken shown that there was a change after this accident happened to Mr. Sandanger, in regard to the oil house and what there was in it, but the witnesses that he has brought forth here have testified also to a change. In John Peterson's testimony, on pages 3 and 4, he was asked, "Was there any gasoline in this oil room, in drums?" Answer "No, not at the time." And then the next question, "Did you have any gasoline or did the company have any gasoline stored in drums in this building?" "A. No, not at the time." And in Mr. Hawkinson's testimony—they all agree upon it—line 20 on page 3 of his testimony, "Were there any other drums in the oil house at that time?" "No, not at that time." On page 4, line 3, "Was there any other gasoline or distillate in the oil house?" "Not at that time." Showing that all the testimony agrees upon it that there was a change in the conditions up there, and under those circumstances it seems to me to simply ask them whether or not there was any mark on these drums in the oil house, without pinning them down to the time, on or about the time of this accident, either shortly before or shortly afterwards

or at the time of the accident, is not proper. I wanted to make myself clear and except to the ruling of the court.

Mr. McCord: It goes to the weight of the testimony.

The Court: I will overrule the objection.

276 Mr. Aretander: Can it be considered by another——

The Court: It is a matter you can call the jury's attention to.

Mr. Aretander: Yes, I know that, but I thought I ought to probably save the point here. May I enter the same objection to questions 20, 21, 22, 23, 24, 25, 26, 27, and each of them?

The Court: That is the ones he is offering now?

Mr. Aretander: Yes, the ones he is reading now. I don't want to object all the time.

The Court: All on the same ground?

Mr. Aretander: All on the same ground, that they are not limited as to time, it appearing in the evidence that a change had taken place.

Mr. Hadley continued the reading of said deposition down to and including the answer to Interrogatory 32, whereupon:

Mr. Aretander: I desire to interpose an objection to question 33: "State whether or not in your opinion the oil and the gasoline of the Carlisle Packing Company were carefully stored?" I want to object to that as incompetent, irrelevant, immaterial, and being a conclusion for the jury.

The Court: Objection sustained.

Mr. McCord: He has not read the question yet.

Mr. Aretander: Yes, that is what I read to the court—was the question, and I also want to object to the next question "State whether or not kerosene or coal oil poured into a stove with hot coals or embers would explode?" For the reason that it is incompetent, irrelevant and immaterial, that this witness has not been shown to

277 be competent to give any testimony as an expert.

The Court: He has not shown any experience.

Mr. Aretander: No experience at all, sir.

Mr. Hadley: Question 30: "State whether or not you are familiar with both gasoline and coal oil, or kerosene so called?" Answer, "Quite familiar." Would that qualify him?

Mr. Aretander: Do you think it would?

The Court: Oh, I will sustain the objection.

Mr. Hadley: I offer this in evidence, I offer that deposition in evidence.

Mr. McCord: We offer in evidence, Your Honor, as a part of the evidence of this witness, the answers to the interrogatories 33 and 34, contained in the deposition of Charles Foyston. We offer to prove by this witness the matters and things stated by him in the answers to the questions.

Mr. Aretander: You offer to prove it by the deposition, I suppose.

The Court: Objection sustained.

Mr. Hadley here offered in evidence the deposition of Nick Lorenson, which he read down to and including the answer to Interrogatory 8, whereupon:

Mr. Arctander: I object to question number nine.

The Court: Read the question.

Mr. Arctander (reading): "As an experienced fisherman, state whether or not you used coal oil to start fires in the stoves" as incompetent, immaterial and irrelevant, the question not being what is the the customary charge, but what he used to do, which would be, of course, not proper evidence.

278 The Court: Objection sustained.

Mr. McCord: We offer to prove by this witness the matters and things stated in the answer to Interrogatory number 9 in the deposition of Mr. Lorenson.

Mr. Arctander: Objected to as immaterial, irrelevant and incompetent.

The Court: Objection sustained.

Mr. Arctander: Now, I also object to question number 10, "State whether or not you consider it a reasonable careful thing to do for a fisherman to start his fire with coal oil?"

The Court: The objection will be sustained.

Mr. McCord: We offer in evidence question 10 put to the witness in the deposition being read, as a part of his testimony, and offer to prove by him the facts stated in said answer.

Mr. Arctander: An objection, for the same reasons.

The Court: Objection sustained.

Mr. Arctander: Also question 11, "Do you think they ought to start fire with coal oil?"——

The Court: Same ruling.

Mr. Arctander: —as calling for a conclusion.

Mr. McCord: Same offer.

Mr. Arctander: Same objection.

The Court: Same ruling.

Mr. Hadley offered in evidence the deposition of Jens Foldvik, which he read down to and including the answer to Interrogatory 8, whereupon:

Mr. Arctander: I want to enter the same objection, as to limit of time, to 9, 10 and 11. He only says he has been in the oil

279 house, don't say when.

The Court: Objection overruled.

Mr. Arctander: Exception.

The reading of said deposition was here continued and concluded.

Mr. Hadley here offered in evidence the deposition of W. W. Council, which he read in evidence.

(The court here took a recess until 1.30 o'clock this afternoon.)

Afternoon's Proceedings, Tuesday, Sept. 10, 1918.

Dr. MILTON G. STURGIS, produced as a witness on behalf of defendant, having been first duly sworn, testified as follows:

(Mr. McCord:)

Q. What is your name?
A. Milton G. Sturgis.
Q. What is your profession?
A. Physician.
Q. Are you practicing in the city of Seattle?
A. I am.
Q. How long have you been practicing?
A. Been here fourteen years, over.
Q. Are you a licensed physician and surgeon under the laws of the state of Washington?
A. I am.
Q. Where did you——

280 Mr. Arctander: We admit the qualifications of the doctor.

Q. (Continuing:) —have your training?
A. At Harvard Medical School.
Q. And how long have you been in the active practice?
A. Fifteen years.
Q. Where is your office?
A. In the Cobb Building.
Q. I will ask you if you have examined Mr. Ole Sandanger, the plaintiff in this case, in the last few days?
A. A week ago, the evening of September 4th.
Q. And to what extent did you examine him?
A. I went over him—had him stripped down to his waist, went over his face, chest, throat, nose and his abdomen.
Q. You examined his eyes?
A. I didn't examine the vision, but I examined the eyeballs.
Q. Just state, doctor, in what condition you found the plaintiff?
A. The plaintiff is in good physical condition. He has a firm layer of fat over his body, which shows that he is not suffering from mal-nutrition, his skin is tense over the fat. Over his face he has some—shows evidences of burns. Under his lips he shows scars. The tip of the nose and on either side the alley in the midline was also burned and scarred, a formation of scar tissue. The circumference of the left ear, particularly the top, shows scars, and his face is a little bit rough, and there is a little touch here, about an inch long, up over his left eye, while out over the side in front of the ear, that shows a very slight superficial scar. That shows that
281 the burns there in those particular points were sufficient to go through the layer of skin. His hands are browned, from which it is fair to assume that they were burned at the same time, but not deeply.

Q. How many stages of burns are there, doctor?

A. There are three stages of burns. Burns are divided into three stages: First, the superficial that one has in a slight burn, as with fairly warm water over your hands, the hands are red, but they don't blister. The second stage is the blistering stage, where they become sufficiently deep so that the serum wells up above the superficial skin and lifts that from the tissues below. And then the third stage is where it is burned through the skin, and that is accompanied by scar formation.

Q. Now, so far as the plaintiff is concerned, are there any burns of the first stage?

A. They would not show at this time. A burn of the first stage heals without leaving any mark behind it, except a reddening, which proceeds up to a certain time, and nature absorbs that.

Q. How about the second stage?

A. The second stage heals in the same manner.

Q. And how about the third?

A. The third stage leaves a scar—leaves a scar, depending on the area burned, the entire area where it is burned through, and in his case you see those scars are very slight.

Q. What have you to say, doctor, as to whether or not the
282 plaintiff would suffer pain from those burns as they now appear at this time?

A. It would be quite impossible.

Q. When does the pain cease from a burn?

A. As soon as they are healed over. They pain because the air gets to the raw surface. That may last so long as they are being dressed and the dressings pulled off the granulations, and the air penetrates the surface. And that disappears very quickly; as soon as nature forms a film properly, the pain ceases.

Q. Assuming that the plaintiff left the hospital with the burns healed, what would you say as to his suffering pain after that time, six weeks afterwards?

A. In my opinion, I think it would be entirely impossible for him to suffer pain.

Q. Did you examine him with regard to his stomach?

A. I went over his—I didn't take an X-ray, but I went over his stomach, without finding any evidence of any enlargement, and the fact alone of his superficial fat is so pronounced and he is in such excellent physical condition, would not warrant a supposition that he has any trouble with his digestion in any way. He is the picture of excellent nutrition. He gets good food and he digests it.

Q. What effect would the burns that the plaintiff has sustained have upon the man's ability to perform ordinary laboring work?

A. It should not affect him in the least, not in the least. He is able to breathe, he is able to—the scars on his face do
283 not in any way interfere with his movements of his facial muscles; the scar on his nose does not interfere with his breathing; and the scar over his ear certainly does not interfere with his hearing in any way. They are small scars which——

Q. His hearing is good, is it?

A. As near as I could ascertain, yes.
Q. What about his eyes?
A. There is no scar at all, no scarring on the eyeballs. His eyelids are not scarred.
Q. That shows that they were not burned, does it?
A. Any defective vision he may have would be there before the burn, would not be caused by the burn itself, or the flash.
Q. The fact of his wearing spectacles, or having defective vision, you think would not result from the burn?
A. Yes, that is something he had before.
Q. Could not result from burn?
A. Could not result from burn.
Q. Why do you say that, doctor?
A. I have had some personal experience. I was burned almost as badly as he, in an explosion, which burned me practically in the same place—burned my face and hands, but it did not produce scars, and at that time I suffered the pain that ordinarily goes with those second degree burns. Mine was just on the verge of the third degree. As soon as it was healed it was over with, didn't affect my vision, my vision was the same after that it was before, bore the same degree of correction.

Q. In a burn of this kind, such as plaintiff has sustained,
284 resulting from an explosion, either gasoline or kerosene,—did you find any indications of any injury to his internal organs, stomach——
A. No, his lungs were absolutely clear.
Q. —by inhalation?
A. There is no evidence of any scarring in his nose or throat; his lungs are clear; the lungs show no evidence of disease; the palpation of his belly showed no tenderness over his stomach, no evidence of any interference with nutrition.
Q. Did you make a manual examination of those parts?
A. Over his stomach, yes sir.
Q. You noticed on his hands that brown——
A. Yes.
Q. Was that permanent or will it pass away?
A. That will pass away.
Q. How long——
A. I grabbed the——

Mr. Arctander: Never mind what you did, doctor.

A. I am speaking—I am just basing my answer on my own personal experience.

Mr. Arctander: I object to what the doctor himself found.

A. And on some knowledge of burns, as treated in the hospitals. That should entirely disappear within a year or two.
Q. Is there any tenderness?
A. No, there is no interference. There is absolutely not enough burn to interfere with the use of his hands. He should use his hands as well now as he ever did.

285 Q. Is the tenderness, the thinness of the skin on his hands or on his face liable, when any exertion is made, to crack?

A. Crack? I think not.

Q. And what have you to say, doctor, as to his physical condition at this time?

A. I think his physical condition is excellent.

Q. What weight is he? Did you weigh him?

A. I didn't weigh him, but he is fat; he is over-weight.

Q. What would you say as to whether or not his weight was normal, or otherwise?

A. I should say he is above the average, decidedly over the average.

Q. You see nothing in him that would prevent him from engaging in any sort of physical labor?

A. No, I see nothing that would prevent him from engaging in any sort of physical labor.

Cross-examination.

(Mr. Arctander:)

Q. Doctor, when you examined this man, you were hired by defendant to do so, you were employed by them to examine him?

A. I was called up by Mr. McCord and asked to examine this man——

Q. And he was sent up there at their request?

A. To my office, apparently.

Mr. McCord: With your consent.

Mr. Arctander: Why, certainly, certainly. I am not going to keep anything under the table. That is all, doctor.

(Witness excused.)

286 SAMUEL J. STRONG, produced as a witness on behalf of defendant, having been first duly sworn, testified as follows:

(Mr. McCord:)

Q. What is your full name?

A. Samuel James Strong.

Q. Where do you live, Mr. Strong?

A. 3706 California Avenue.

Q. And what is your business?

A. Paymaster.

Q. For what firm are you employed?

A. Nilson & Kelez Shipbuilding Corporation.

Q. How long have you been employed by them?

A. Since April 24th.

Q. Are you acquainted with Mr. Ole Sandanger, the plaintiff in this case?

A. Yes, I know him. I don't——

Q. Has he been working for the firm of Nilson & Kelez Shipbuilding Corporation?
A. Yes sir.
Q. Have you prepared from the books of that firm a statement of the time, the hours and days, that he has put in at your firm since May, 1918?
A. Yes, sir.
Q. I will call your attention to defendant's exhibit for identification number "3," and ask you if that is the statement taken by you from the books of the Nilson & Kelez Shipbuilding Corporation?
A. It is a copy of the statement.
Q. You took it yourself, did you?
A. Took this myself.
287 Q. And it is a correct transcript of it?
A. It is, absolutely.
Q. From that statement, are you able to state what date Mr. Sandanger commenced work at that corporation?
A. Commenced to work——

Mr. Arctander: I object to that—it shows for itself—the statement.
Mr. McCord: Well, it doesn't show——
Mr. Arctander: You may have the statement.
Mr. McCord: I want to explain the statement, as to what it means.
The Court: Objection overruled.

(Mr. McCord:)

Q. Does it show——
A. On May 20th.
Q. How long did he work, from May 20th until June 1st, how many days?
A. To June 1st, about—(examining) ten.
Q. Ten days?
A. Yes.

Mr. Arctander: He worked ten days, according to that statement?
Mr. McCord: Yes.

(Mr. McCord:)

Q. And does that statement show the number of days and dates on which he worked, the number of hours per day?
A. Yes sir.
Q. The first column on defendant's exhibit number "3" shows the days of the month, the different months, does it?
A. The days of the different months.
Q. And the second shows the number of hours per day
288 that were worked by him?
A. Yes.
Q. And the next column shows the total for the week; that means the amount of money that was paid him each week?

A. The earnings, yes.
Q. The earnings each week. And the next place shows the date of what?
A. The date—consecutively the date.
Q. Oh, yes, consecutively.

Mr. Aretander: The same thing.

(Mr. McCord:)

Q. Yes, the same thing. And the total amount of money paid to him was how much?
A. $287.64.
Q. The total number of hours put in was——
A. 531½ hours.
Q. And at eight hours a day, that would be how much?
A. About sixty-one days.
Q. Sixty-one days?
A. Sixty-one and a half.
Q. Yes.

Mr. McCord: I offer in evidence defendant's exhibit number "3."
Mr. Aretander: I have no objection, only I want to ask the witness some questions.

By Mr. Aretander:

Q. Those dashes on the statement show the days that he did not work any?
A. Yes sir.
Q. Didn't work at all. Part of them were Sundays and
289 part of the other days, Sundays right after the line?
A. No sir. I don't think there are any Sundays in there, are there?
Q. Oh, yes.

(Mr. McCord:)

Q. See if there are any Sundays there (handing paper to witness).
A. Oh, yes, Sundays——

(Mr. Aretander:)

Q. Each Sunday follows the larger dash, doesn't it?
A. Yes, that is right. Sundays are in there.

(Mr. McCord:)

Q. It does show Sundays, does it? Does it show holidays?
A. It shows all days.

(Mr. McCord:)

Q. All days?
A. All days.

(Mr. McCord:)

Q. Right straight through?

(Mr. Arctander:)

Q. All holidays with dash opposite to the date, that shows that he did not work that day?
A. That he did not work that day, no sir.

Mr. Arctander: That is all. We have no objection.
Mr. McCord: I offer in evidence defendant's exhibit number "3."
The Court: It may be admitted.

Paper referred to was marked "Defendant's Exhibit "3."

(No cross examination. Witness excused.)

290 FRANK WRIGHT, produced as a witness on behalf of defendant, having been first duly sworn, testified as follows:

(The Clerk:)

Q. What is your full name, Mr. Wright?
A. Frank Wright.

(Mr. McCord:)

Q. What is your name?
A. Frank Wright.
Q. Where do you live, Mr. Wright?
A. I live on Lummi Island, about six months of the year, and Seattle six months of the year.
Q. Are you connected with the Carlisle Packing Company, the defendant in this case?
A. Yes.
Q. In what capacity?
A. President and manager.
Q. How long have you occupied that relation?
A. Ever since it organized, 1902.
Q. Are you acquainted with Mr. Sandanger, the plaintiff in this action?
A. Yes. Since the accident, not before.
Q. You did not attend to his employment personally, then, did you?
A. No.
Q. Now, I want to ask you, Mr. Wright, whether your company operated a cannery at Cordova, Alaska——
A. Yes sir.
Q. —in the year 1917?
A. Yes sir.
Q. During that year and the year 1916, from what place or source did you procure your kerosene?

291 A. We had a contract with the Standard Oil Company, of Seattle. We bought all of our oil—all of our gasoline and kerosene, from the Standard Oil Company, except that——

Q. In what sort of containers was it bought?

A. Well, in five gallon cans and one hundred and ten gallon drums.

Q. And the kerosene, how was that bought?

A. Well, sometimes in drums and sometimes in——

Q. What was the size of the drums?

A. They are one hundred gallon or one hundred and ten.

Q. Any fifty gallons?

A. Yes, we did use fifties.

Q. How were they indicated, what marks were on these drums that indicated whether they were kerosene or gasoline?

A. The kerosene was all—the ends of the drums painted white.

Q. And the gasoline, how was that marked?

A. Red. It was painted red.

Q. When you purchased it from the Standard Oil Company here marked as you stated, was it taken to Cordova in the same condition as it was when you bought it?

A. Yes.

Q. The Carlisle Packing Company owns certain fishing boats—No. 3, C. P. C. No. 3?

A. Yes.

Q. No. 2?

A. Yes.

Q. Are you familiar with that boat?

A. Yes, I have seen it.

292 Q. What is the size of it?

A. I think it is about 36 feet.

Q. 28 feet.

(Mr. Aretander:)

Q. How much, 36?

A. 28 feet, I guess it is.

Mr. Aretander: 28 feet.

(Mr. McCord:)

Q. You had different sizes, did you?

A. Yes sir.

Q. Well, assuming it was a 28 foot boat, what was its value?

Mr. Aretander: Objected to as immaterial and irrelevant.

A. I think about——

Mr. Aretander: Wait a minute, Mr. Wright.

The Court: Objection overruled.

A. About $1,500.

(Mr. McCord:)

Q. Worth that at the time?
A. That is about what it cost to build.
Q. That was in 1917, and on March 7th it was worth about that?
A. Why, yes, I think so.
Q. What is it worth now?

Mr. Aretander: Objected to as immaterial, irrelevant and incompetent.
The Court: I will overrule the objection.

A. It is not worth any more than that.

Mr. Aretander: What is that?
The Court: I will overrule the objection.

(Mr. McCord:)

Q. What is it worth now?
A. It is not worth any more than fifteen hundred.
Q. Did you get any gasoline for use in your plant in 1917,
293 at Katalla?
A. No, they don't make—gasoline, yes.
Q. Yes.
A. Not gasoline——
Q. I say, did you get gasoline there?
A. No, distillate.
Q. Distillate?
A. Yes.
Q. Did you get any kerosene there?
A. No. They don't make it.
Q. They don't make kerosene at Katalla. Did you buy your kerosene from any other source than the Standard Oil Company?
A. No.

Cross-examination.

(Mr. Aretander:)

Q. Mr. Wright, I suppose you were not down to see these different drums when they were shipped, you were not present and saw them shipped?
A. I think I was. I think I loaded this——
Q. When, at what time?
A. In April or May—no, April.
Q. April?
A. No, it was in May.
Q. 1917?
A. May. I loaded a boat down here with one hundred and ten drums, or something like that, and this was the lot.
Q. In April or May, 1917, is that what you mean?
294 A. Yes, we sent a new boat up there.
Q. Can you not answer me whether it was 1917 or not?

A. Yes, 1917.
Q. That is the only time you know when you had anything to do with any that was shipped?
A. Yes, that is the only——

Mr. McCord: I move to strike it out as immaterial if it was sent out after March, 1917.
The Court: Motion denied.

(Mr. Aretander:)

Q. You were not there at any other time and saw any shipments?
A. No.

Redirect examination.

(Mr. McCord:)

Q. Did you have anything to do with shipping in 1916, prior to March 1st, 1917?
A. No.
Q. You had no personal knowledge?
A. I just loaded this one boat personally.

(Witness excused.)

295 HARRY W. BRINGHURST, produced as a witness on behalf of defendant, having been first duly sworn, testified as follows.

(The Clerk:)

Q. What is your name?
A. Harry W. Bringhurst.

(Mr. McCord:)

Q. Where do you live, Mr. Bringhurst?
A. Seattle.
Q. And how long have you resided in Seattle?
A. I came in 1889.
Q. And by whom are you employed at the present time?
A. The city of Seattle.
Q. How long have you been employed by the city of Seattle?
A. Well, not continuously, I was out one year; about eleven years.
Q. And how long recently?
A. Seven years.
Q. And in what capacity, what are your duties?
A. Fire Marshal of the city.
Q. How long have you been Fire Marshal?
A. Seven years.
Q. Were you connected with the fire department of the city of Seattle prior to that time?
A. I was chief of the fire department before.
Q. Have you had any experience in fires resulting from explo-

sions in the city of Seattle during recent years, during the time you have been connected with the city?

A. I have.

Q. I will ask you if you are familiar with the relative properties of gasoline and kerosene in so far as explosiveness is con-

296 cerned?

A. I am, as I would find them at fires in Seattle and other places.

Q. Have you had any experience in chemistry, in studying the chemistry of these oils, gasoline, kerosene, distillate and so on?

A. Yes.

Q. Where did you study it?

A. Well, that was just my reading as Fire Marshal.

Q. You keep familiar with——

A. I have not studied chemistry in a great many years.

Q. But you have studied it?

A. I have.

Q. You are familiar with—you have had practical experience in handling gasoline and kerosene, have you, as well as in explosions resulting therefrom?

A. I have.

Q. Mr. Bringhurst, assuming that on the 7th day of March, 1917, at Cordova, Alaska, about the hour of somewhere between twelve and three o'clock, upon a boat out in the water, there was an explosion, either from kerosene or gasoline; assuming that the boat was about 28 feet long and contained a cabin that was enclosed, about six feet from the floor to the ceiling, about ten feet long and about six feet wide, and that it was about twelve inches from the deck to the water; that there was a small gasoline engine in the boat, with sufficient power to run her at the rate of six miles an hour; that the engine had been running and the boat running almost continuously since eight o'clock in the morning; and that from the deck

297 down to the cabin there were certain steps, about two or three of them, and that at the corner of the cabin on the deck there was an opening folded back so that it opened in that part sufficient for a man to enter and go down the stairway; that there was a stove, a sheet iron stove, with the exception of the top, which was cast iron, with four lids, or two, it doesn't matter, and that the lids were off; that it had a firebox which was about twelve inches by twelve or eighteen; the stove was two feet in length, or about twelve inches wide, or that it was two feet wide; that prior to this time when the explosion occurred, there had been a fire in the stove and that soup had been heated upon it, meat had been cooked and coffee boiled; that after the soup and meat had been taken out and eaten that the fire was replenished with wood, good substantial wood ends from lumber from a mill, and that the coffee had been boiled and been taken out, and that a fire remained in the stove for about three-quarters of an hour, and that when the coffee was finally removed from the stove there was a bed of blazing coals all over the firebox, and that in the bottom of the stove there was four inches of fine gravel and

sand, upon which the fire rested, and that the stove was upon a bench, upon sort of a rack over a bench, about two feet or eighteen inches from the floor, and that within twenty minutes or fifteen or thirty minutes, we will say, after the coffee was taken off, a man went down to start a fire in the stove; that he placed wood in the firebox with the lids off, the front of the stove open; that he
298 took a can of oil and poured the oil in upon the wood, and while he was pouring the oil upon the wood he was looking at the engine, which would require him to turn around, turn his head away from the stove in order to see the engine; and that he dropped the can down in his right hand, struck a match with his left hand and threw it into the stove where this oil had been poured upon the wood; and that as the result of those actions there was a flare-up or explosion, that resulted in the plaintiff being burned about the ears and nose and face and hands and legs; that immediately after the explosion, the whole interior of the cabin was filled with flames; that the coal oil can that he held in his hand was smashed and the oil exploded, and that the flames burned the interior of the cabin to such an extent that it was black; that it threw the plaintiff across this cabin towards the bow of the boat; that he was partially unconscious; that the plaintiff then came out of the cabin, went up on the deck, and a few seconds afterwards the hatchway—this entrance to the cabin—was closed; assuming that a coal oil can, or an oil can, I will put it, was placed underneath the bench, under the stove, and that it had been there during all of the time of this fire that for forty-five minutes had been in the stove and during the time that the engine had been in the stove and during the time that the engine had been running, the cabin in this condition; I will ask you, assuming these facts to be true, are you able to state whether such an explostion could have resulted from kerosene as well as from gasoline?

299 A. I would say that it could.

Mr. Aretander: We now move to strike that out. I want to enter an objection——

A. I would say yes.

Mr. Aretander (continuing): —to the question. I move to strike out that answer, so that I can make an objection. I will let it go until he asks him.

(Mr. McCord:)

Q. In your opinion could it have resulted from kerosene as well as gasoline?

Mr. Aretander: Wait. Don't answer, please. I object to this for the reason that the hypothetical question propounded to this witness is defective in several particulars, not a proper question under the testimony on either side, first in that it assumes that the testimony shows that there was *a* any cooked there, which it does not.

Mr. McCord: Mr. Stensland testified to that.

The Court: I think there is no testimony on that.

Mr. McCord: Mr. Stensland said so.

Mr. Arctander: No sir. Mr. Stensland said he carried the meat up, but he didn't claim any meat was cooked.

Mr. McCord: He said they cooked dinner and that part of it was meat.

The Court: I don't think it is very material.

Mr. Arctander: No, I only call attention to these things, which I think I must under the law, in order to make a good objection. Further, that it is stated that one of the facts assumed in this question was that the fire was replenished after the soup and meat
300 had been taken out, there being no evidence to that effect.

Mr. McCord: Mr. Stensland testified to that, Your Honor.

Mr. Arctander: All right. You take your chances on it. Further, that the fire remained in the stove three-quarters of an hour. There is no testimony of that. That it further contains this assumed fact that while the party who lit the fire was looking at the engine, he turned his head away from the stove. There is no testimony of that kind.

Mr. McCord: There is.

Mr. Arctander: Well, I will tell you what the testimony is. The testimony is of a can——

The Court: Make your objection.

Mr. Arctander: All right. And further assuming that the testimony shows that the oil can was placed under the bench, under the stove, which I do not think there is any testimony on.

Now, as to this in regard to turning away, I call Your Honor's attention to the fact that the only evidence there is is the testimony of Mr. Peterson, who claims that after the accident Mr. Utness—he was asked to repeat his language and said Mr. Utness told him so. Of course, that does not constitute evidence before this jury or before this witness of that fact—evidence that was brought out simply for the purpose of impeaching Mr. Utness and not to show the substantive fact. I am not very insistent upon it, but I want to make this point that the record will show we object to the question for that reason.

301 The Court: I overrule the objection.

(Last question read.)

A. It could.

(Mr. McCord:)

Q. Mr. Bringhurst, what is the result of pouring kerosene upon wood placed upon hot embers or hot gravel in an enclosed stove such as the one I have indicated to you, in regard to the generation of vapors?

A. The kerosene would very soon vaporize.

Q. And when it vaporizes, what is the result, when this vapor comes in contact with a lighted match?

A. The vapor ignites.
Q. And what follows?
A. A very rapid ignition, which amounts to an explosion.

(Mr. Arctander:)

Q. A very rapid what?
A. Ignition.

Mr. Arctander: Ignition.

(Mr. McCord:)

Q. And does this require the introduction of air, oxygen, to come in contact with it?
A. It will not explode without a certain mixture of air.
Q. The lids were off the stove. Would that afford a sufficient mixture of air to warrant the explosion?
A. Yes.
Q. In your experience in the fire department of this city, have you had anything to do with kerosene explosions resulting from the lighting of the fire or attempted lighting of the fire where the can or oil exploded too?
A. Yes sir, a great many.
Q. Where you knew it was kerosene?
A. When I knew it was kerosene.
302 Q. What is the difference between the explosion of gasoline and the explosion of kerosene, when kerosene has been heated in the way you have indicated?
A. You mean of their vapors?
Q. Vapors, yes.
A. I don't think there is any particular difference.
Q. At what temperature, Mr. Bringhurst, will the vapors be generated from kerosene, coming in contact with——
A. It depends on the grade of kerosene, the amount of impurities in it. I should say 120 degrees, or thereabouts.
Q. Gasoline would be what?
A. Gasoline commences to give off vapor at zero, or less.
Q. When the vapor that is generated from the coal oil or kerosene comes in contact with a lighted match, will that cause an explosion, the same as gasoline?
A. The same as the gasoline vapor?
A. Yes.
A. Under the same conditions it would.
Q. Yes.

(No cross-examination. Witness excused.)

303 W. M. FLINN, produced as a witness on behalf of defendant, having been first duly sworn, testified as follows:

(The Clerk:)

Q. What is your name?

(Mr. McCord:)

Q. What is your name?
A. W. M. Flinn.
Q. Where do you live, Mr. Flinn?
A. Seattle.
Q. By whom are you employed at the present time?
A. Carlisle Packing Company.
Q. How long have you been employed by that company?
A. June 1st.
Q. Of the present year?
A. Yes sir.
Q. By whom were you employed prior to that time?
A. Standard Oil Company.
Q. How long were you employed by the Standard Oil Company?
A. January, 1913.
Q. When did you leave their employment?
A. May 31st.
Q. 1918?
A. 1918.
Q. During the time that you were employed by the Standard Oil Company, what were your duties with regard to the sale of gasoline, kerosene, distillate and so forth?
A. Well, for practically two years I was salesman on their boat that makes every town in the Sound and distributed coal oil, gasoline and distillate.
Q. On the Sound?
A. And for the balance of the time I was assistant to the
304 manager in the city.
Q. And during the year 1916 and '17 what were your duties?
A. I was—most of that time was taking care of the canneries, seeing that they got their orders taken care of.
Q. Did the Standard Oil Company, during 1916 and 1917, furnish kerosene and gasoline and distillate to the Carlisle Packing Company, the defendant in this case?
A. They did.
Q. In what quantities?
A. We shipped them——
Q. With regard to how much they needed, all of it or only part?
A. We thought we shipped them all of it.

(Mr. Arctander:)

Q. What is that?

A. We thought we shipped them all of it. We thought we had all of their business. We had no reason to believe anyone else was getting any of it.

Q. Did the Standard Oil Company in 1916 and 1917, prior to March 7th, ship any kerosene and gasoline to Cordova, Alaska, to the Carlisle Packing Company?

A. Yes sir.

Q. In what sort of containers was it sent?

Mr. Aretander: Was it 1916 and 1917?

Mr. McCord: 1916 and 1917, prior to March 7, 1917.

Mr. Aretander: All right.

A. We made shipments to them of coal oil, which they call "Pearl Oil," in 54-gallon export barrels, that is, what they call a small 54-gallon drum. We also shipped gasoline to them, I think, if
305 I am not badly mistaken, as high as 150 cases at a time. Sometimes we would make shipment of gasoline in 108-gallon drums. They averaged about 106 to 110. We also made shipments to them in distillate, in 108 and 110-gallon drums.

Q. How were these kerosene drums marked, so as to indicate the contents?

A. All kerosene drums, it don't make any difference what size container, whether 54 gallons or a hundred and eight, is stenciled white, with a large ring stenciled around each end, saying "Standard Oil Company" in black letters, and in the center of the drum, or export barrel, no matter which it is, is "Pearl Oil" or "Best Lamp Oil."

Q. How were the ends of the barrels or drums painted?

A. White—kerosene drums are white.

Q. The kerosene drums are white. How were the gasoline drums painted?

A. Red, unless otherwise—some canneries want all their drums yellow.

Q. Is that the invariable rule?

A. Invariable rule is red. The Interstate Commerce rule requires that.

Q. How about the invariable rule as to kerosene?

A. Always white.

Q. Does the law or the regulations require that?

A. The regulations require white.

Q. You had charge of these shipments yourself, did you?

A. I took the orders.

Q. You saw them shipped out, did you?

306 A. I have seen thousands of drums shipped out. I never, of course, went down and supervised the shipment of any particular order, but I have seen them, and I have helped fill thousands of drums.

Cross-examination.

(Mr. Aretander:)

Q. This painting on the ends of the drums, what was the nature of it, was it yellow paint?
A. I could not tell you the exact ingredients of the paint. I know part of it is——
Q. Was it water colors?
A. No sir, it was not. It will not wash off.
Q. What?
A. It will not wash off.
Q. It will not wash off?
A. No sir.
Q. Even standing around in the rain in Alaska?
A. We have had drums on the docks——
Q. Let me ask you——
A. I wanted to explain to you why it will not wash off.

Mr. Aretander: That is all.
Mr. McCord: That is all. We rest, Your Honor.

(Witness excused.)

3061½ *Rebuttal.*

307 Mr. Aretander: May it please Your Honor, I offer in evidence—I have copies here—the stipulation to read the affidavit on the trial, of Isaac Utness, who was a witness in the case, and the witness John Peterson was asked an impeaching question as to him, and counsel stipulated—without their having asked that question from Mr. Utness, and I objected to it at the time of taking the deposition, and then we agreed that I might take this affidavit and read it in full, either in rebuttal or in direct, with the same force and effect as if given on the trial. (Reading stipulation.) I offer this in evidence now.

Mr. McCord: Very well.

Mr. Aretander: Ladies and gentlemen, this is the affidavit of Isaac Utness, about which you heard me read the stipulation, that it be read with the same force and effect as if he testified.

Mr. Aretander here read the affidavit of Isaac Utness on file herein, which reads as follows, omitting the formal parts:

"Isaac Utness having been first duly sworn, deposes and says:

"I am the identical person whose deposition was taken in the above entitled action at the office of Hadley & Hadley, in the Colman Building, Seattle, Washington, on the 4th day of February, 1918, by and before Earl B. Richard, Esq., a Notary Public.

"I have been shown a copy of the deposition of John Pederson, the port engineer of defendant, taken in the above entitled action on February 14th, 1918, before said Earl B. Richard, Notary Public,

at the same place where my deposition was taken on the 4th day of February, 1918, furnished by said Earl B. Richard, Notary Public, and have carefully read what said John Pederson in his deposition did state as to any conversation or conversations claimed by
308 him to have been had with me and have familiarized myself with any and all statements he claims I have made to him, and after carefully pursuing his said deposition I state under oath that I never had any conversation with him at the dock of the defendant's cannery near Cordova, Alaska, or any other place either at five o'clock in the afternoon, or evening of March 7th, 1917, or at any other time, either on said day or on any other day during the month of March, 1917, concerning the accident to plaintiff Ole Sandanger.

"I further state that I did not, at that time or at any time, tell John Pederson that Ole Sandanger was, after we had had our lunch, told by Ivar Stensland to go and wash the dishes, or that he went into the forecastle to heat the water, or that I went down in the forecastle to oil the engine, or that when I went down in the forecastle Ole Sandanger was holding the oil can in both hands and was looking at the engine, or that then the flame flared up from the stove; nor did I at that or any other time tell him that Sandanger was then pouring the oil into the stove; nor did I at that or any other time tell Pederson that the engine was 'missing' at the time, nor that plaintiff at the time he was pouring the oil into the stove was standing in front of the stove; nor did I at any time make any statement to Pederson of a similar purport or character, or to such effect.

"Although I made no statement to that effect to John Pederson, it is nevertheless, as a matter of fact, true:

"(1) That Ivar Stensland after our lunch on the day Ole Sandanger was hurt told him to go down and wash the dishes.

"(2) That Sandanger then went down to the forecastle to heat the water for that purpose.

"(3) That I went down in the forecastle to oil the engine.

"(4) That Ole Sandanger in order to pour the oil from the can while pouring the oil into the stove, had to hold the can with both hands, as he had to hold the handle with one hand and with the other tip the bottom of the can so that the oil would come out of the spout.

"(5) But that when the flame flared up from the stove he
309 was not pouring the oil in the stove, but was lighting and throwing into the stove a match.

"(6) The engine had been 'missing' before, but not at the time of the accident.

"(7) Ole Sandanger could not see the engine from where he was standing at the time of the accident.

"I further state that it is true that I met John Pederson and had a short conversation with him on Pike Street in Seattle, Washing-

ton, about the first day of February, 191-, but it is not true that he at that time asked me if I remembered what I had told him about the accident to plaintiff nor is it true that he told me about what he claimed I had said to him in reference to such accident.

"At this time there was nothing whatsoever said about me ever having told him anything about the accident.

"The conversation between us at that time consisted in his telling me that he was going to be a witness for the company in the case, but that he did not know a thing about the explosion and he there and then asked if I could tell him anything about it. I did not answer him.

"Further affiant saith not.

(Signed) "ISAAC UTNESS."

Mr. Aretander: I might perhaps, while I am at it, read the balance of the affidavit of John Holland, offer that in rebuttal—the four last lines of page 2 and all of page 3—John Holland, whose affidavit I read before in direct examination partly (reading):

"In order to get the gasoline out of the drum, I during all of this time in February and March, 1917, used a pump by the aid of which I pumped the oil out from an opening in the top of the side of the drum which was lying upward.

"There were no faucets in the end of either of the drums up to the time when plaintiff was burned or for some time there-
310 after. But some three or four weeks after he was hurt they got some drums in there with a faucet in the end, but not before."

OLE SANDANGER, the plaintiff, being recalled in rebuttal, testified as follows:

(Mr. Aretander:)

Q. Mr. Sandanger, you heard the deposition read, of Ivar Stensland——

A. Yes sir.

Q. —this forenoon, in which he stated that at the time of the accident there was a five gallon gasoline can standing on the other side of the engine in the lower bunk. You were allowed to testify that there was a five gallon can there when you were out before with the boat, during those twenty days or two weeks that you were out with the boat. I will ask you to state whether or not you had used, during that time when you were out with the boat two weeks, or whatever it was—whether or not you had used any of the contents of that five gallon can of gasoline, and for what purpose?

A. Used it for priming oil.

Q. When you first started into that boat and first used it for priming oil——

A. Yes.

Q. —the contents in it, put into the little can—how much, about, of gasoline was there in that can then?

A. There was about four or five inches in the can when I started in the boat.

Q. Four or five inches from the bottom?

A. Yes, from the bottom.

311 Q. Otherwise it was empty?

A. Yes.

Q. Now, the last week, or you stated that about four days before the accident to you, you went into the oil house with this little red can to get some priming oil from the gasoline can?

A. Yes sir.

Q. Four days before you were hurt?

A. Yes sir.

Q. At that time what had become of the oil that was in this five gallon can?

A. Well, because used it all up; there was no more in the five gallon can.

Q. There was no more left at that time?

A. No sir, there was no more left. That was the reason I went in.

Q. Was that filled again while you were there at all?

A. No sir, it was not filled up.

Q. At the time of this accident, this explosion, it was then an empty five gallon can that stood there, was it?

A. Yes, she was empty.

Q. Was there anything over it besides——

A. Well, all the clothes we had with us we throwed up—we used to throw up in the lower bunk there and they was over the can and all around there.

Q. Thrown all over the can?

A. Yes.

Q. You heard Mr. Stensland's testimony as to what you did on this trip?

A. Yes sir.

312 Q. That you came down to the point at the opening of Boswell Bay about eleven o'clock?

A. Yes, about eleven o'clock.

Q. And that was about right?

A. Yes, about right, about eleven o'clock.

Q. He stated that then you went all around this bay and took again a trip of two miles or more each way before you went up and loaded the sand. Now, what were the facts in regard to that?

A. No.

Q. Did you go around that bay that morning?

A. No sir, we didn't go around the bay, we went about 300 yards, about a thousand feet, about 900 feet inside of the mouth.

Q. From this point, the opening of the bay?

A. Yes.

Q. About 300 yards?

A. About 300 yards.

Q. And what did you do there at that place when you came to that?

A. Well, we put Stensland ashore. He was going to look for trap piling there.

Q. You put Stensland ashore?

A. Yes.

Q. And after you put him ashore, what did you do?

A. Then we went across the mouth and load up the sand right on the other side.

Q. Right on the other side?

A. Yes.

Q. Where did you put him ashore, can you come and
313 show the jury about the point where you put him ashore, whereabouts?

A. Right ashore, just inside of that point there.

Q. Between the rocks and the shore there?

A. The rocks and the shore.

Q. And that was right across the bay from the point where you first came in?

A. Yes. It was on the starboard side when we came into the bay.

Q. What did you do after you had put him ashore at this point?

A. Well, we went across to the other side and load up the boat.

Q. Back again to the point where you entered the bay?

A. Yes, we crossed the other side of the bay.

Q. You crossed the other side of the bay from where you left Stensland?

A. Yes sir.

Q. And what did you do there?

A. Well, we load up the sand.

Mr. McCord: I object to that, Your Honor, as not proper rebuttal.

(Mr. Aretander:)

Q. What did you bring in all this stuff for?

Mr. McCord: Objected to as not proper rebuttal, incompetent, irrelevant and immaterial.

The Court: He went over it, testified to the entire trip, didn't he, before?

Mr. Aretander: No, I didn't ask him. It was not proper for me to ask him that. He only stated what time they left Boswell
314 Bay and how soon after they left the fire occurred?

Mr. McCord: He stated, in his direct testimony, the whole trip that they took. It is not proper rebuttal. We have no opportunity to meet it with any of the witnesses.

(Discussion.)

The Court: Well, let him answer the question. I will overrule the objection. You do not want to go over anything twice.

Mr. Aretander: No, I shall not do that.

(Mr. Aretander:)

Q. After you got back to that point, what did you do?
A. We started to load up the sand.
Q. What?
A. We started to load up the sand.
Q. While Stensland was out of the boat?
A. Yes, he was ashore.
Q. He was ashore?
A. Yes, he was on the other side.
Q. And after you loaded on the sand, what did you do?
A. Then we started up the engine and ran across and got him on shore, in the boat, and then we——
Q. Got Stensland on board and steamed up——
A. Yes, and steamed up the bay.
Q. How long a time did it take from when you reached that bay, at the point of Boswell Bay, until you steamed out again?

Mr. McCord: I object to that as not proper redirect. This is simply going over the same trip that he went before. If he left out anything, then it is his own misfortune.

315 Mr. Aretander: I have not left out any.

Mr. McCord: I don't think he has. He went into it in all the details before. Now we are starting in to try it all over again. We have no witnesses here.

(Discussion.)

The Court: Let him answer the question.

(Mr. Aretander:)

Q. How long a time did it take from the time you got to Boswell Bay until you started out again?
A. It was about an hour.
Q. About an hour?
A. Yes, about an hour.
Q. How about Mr. Stensland—you heard Mr. Stensland's testimony that he waited to take out the sand until he got back again from this trip around Boswell Bay, because he wanted to take it out when there was full tide——

Mr. McCord: I object to that as not proper redirect, Your Honor.
The Court. He has not asked the question yet.
Mr. Aretander: Nothing at all.

(Mr. Aretander:)

Q. Now, what are the facts about that in regard to getting the sand at all when the tide was full up?

Mr. McCord: I object to that as incomptenent, irrelevant and immaterial and not proper redirect.

The Court: Objection overruled.

A. We could not get the sand on board when it was up high tide, because the sand was covered and the ice was laying right—on the high water, the ice was going right down to the water, so we had to take the sand aboard before——

316 Q. Before the high water?

A. Yes. That is what we had to do.

Q. You heard also Mr. Stensland's testimony; three times in giving his deposition, he stated that you volunteered to go, that he just said to the boys "You must go up and fix it" and you volunteered to go?

A. Yes.

Mr. McCord: Objected to as not proper redirect.

The Court: Objection overruled.

(Mr. Aretander:)

Q. Did you or did you not?

A. No, he told me——

Q. Did you or did you not volunteer?

A. No, sir, I didn't volunteer. He told me to go down and do so, and I went down to do what he told me.

Q. I will ask you to state whether or not before you were hurt or at the time when you were in there, in the oil house, there was any fifty gallon drum of any kind there?

A. No, sir.

Mr. McCord: I object, now, Your Honor, and I move to strike that out. That is not proper redirect.

The Court: Yes, he testified fully to what there was in the oil house.

Mr. Aretander: Yes, he testified to what there was, but this is in rebuttal of their statement that there was a fifty gallon drum. I didn't ask him anything about it. Maybe counsel did on cross examination, I am not sure. I didn't recall.

(Mr. Aretander:)

Q. I will ask you whether or not you at any time saw in the oil house any crated gasoline cases?

317 A. No, sir, I didn't see any.

Q. Five gallon cans?

A. No, sir, I didn't see any.

Mr. McCord: I would like for the court to instruct the witness not to answer until I can get an objection in.

Mr. Aretander: You remember that now.

The Court: Give the attorney time to make objections each time.

Mr. Aretander: You remember that now.

A. Yes, sir, I remember that.

(Mr. Aretander:)

Q. Now, I will ask you to state whether or not, after you cam down in the forecastle this time to make the fire—whether or n the engine was "mi-sing" at all?

A. No, she was not "missing" then.

Q. State whether or not you at any time when you were dow there turned away from the stove, looked at the engine?

Mr. McCord: Wait.

Mr. Aretander: No, I waive that question. I will get it just th way he said it.

(Mr. Aretander:)

Q. I will ask you whether or not you at that time, while pourin the oil, were looking at all towards the engine?

A. No, sir, I was not looking at the engine.

Q. You heard the testimony of Mr. Stensland that on this fo noon he got the dinner. State whether or not he got any dinner all, or assisted?

Mr. McCord: I object to that as not redirect. He went into th in the first instance.

The Court: Objection sustained.

318 (Mr. Aretander:)

Q. I will ask you to state whether or not Mr. Stensland had an thing to do with the lighting of the fire there that day?

Mr. McCord: I object to that as not proper redirect. He aske him all about that on his direct examination. There is no u going over the same thing.

The Court: I do not remember. I will overrule the objection

(Mr. Aretander:)

Q. State.

A. No, sir, he didn't have any——

Q. State whether or not he used the coal oil can there at all— Mr. Stensland?

Mr. McCord: I object to that.

A. No, sir.

Mr. McCord (continuing): —as not proper redirect, and incom petent, irrelevant and immaterial.

The Court: Denied. Overruled.

(Mr. Aretander:)

Q. I will ask you to state whether or not it is true, as Mr Stensland stated, that after you were afire and were up on deck

afire, that the other fellows were slapping you with their hats and fanning you?

Mr. McCord: I object to that——

Q. (Continuing:) —the other men?

Mr. McCord (continuing): —as incompetent, irrelevant and immaterial and not proper redirect.

The Court: Objection overruled.

A. No, sir, they didn't do such a thing.

(Mr. Arctander:)

Q. He said you ran around the cabin. State whether or not you did.

319 A. No, I didn't run around the cabin. I was only about—there was six inches outside of the cabin, you couldn't hardly run around the cabin, you had to hold fast. If you run around the cabin and will not have any hand to hold me, I couldn't run around the cabin. How could I?

Q. Did Mr. Stensland have anything to do about telling you to go overboard?

A. No sir, there was nobody told me at all to go over.

Q. Had he got the companionway shut when you went overboard?

Mr. McCord: Objected to as incompetent, irrelevant and immaterial.

The Court: Oh, let him answer.

A. Well, I went in the water. I didn't see how they got the fire out at all.

(Mr. Arctander:)

Q. Well, you don't know when the companionway was shut, whether it was before or after you went out overboard?

A. No sir, I went out; I don't know.

Q. Was there any cast iron top or any cast iron lids on that stove?

A. No sir——

Mr. McCord: I object as not redirect.

The Court: Objection sustained. He described the stove fully.

Mr. Arctander: Yes, he described the stove fully. Well, he stated it was sheet iron, I think. Yes, that is right. I will withdraw that.

(Mr. Arctander:)

320 Q. Now, you heard the testimony of Mr. Stensland in his deposition here about the firewood on board that boat that day that you were hurt. Now, I will ask you whether or not there was any either ends of planking or timber ends on board that boat on that day?

Mr. McCord: He has already testified to that. He stated what s of wood was there and the only wood that was there, according his own statement.

The Court: He described, fully, what wood was there.

Mr. Arctander: He described the wood that he used, but I thi it is proper for me to contradict that.

The Court: He told what he thought the wood was, and the oth witness told what he thought, and now it is up to the jury to t what is true. Sustain the objection.

(Mr. Arctander:)

Q. I will ask you to state whether or not there was any place und neath the bench that the stove stood on to rick up any wood?

A. No sir, there was no place, because the side was going up li this. There was three braces on the——

Q. Just answer "Yes" or "No." Was there any place for it the

A. No sir.

Q. How far below was the edge of the floor, was it under the ben or outside of the bench or right even with the bench?

Mr. McCord: I object to that as not proper redirect. He describ the bench fully, the whole interior of that boat.

The Court: Objection sustained.

Mr. McCord: It is for the jury to say.

321 Mr. Arctander: What are you afraid of it for, then?

Mr. McCord: I am not afraid of anything, but I don want you to try this case all over again, if I can help it.

Mr. Arctander: Did Your Honor rule?

The Court: Yes, I sustained the objection.

(Mr. Arctander:)

Q. State whether or not there was any dry wood at all——

Mr. McCord: Objected to.

Q. (Continuing:) —aboard that boat?

Mr. McCord: Objected to as not proper redirect. He describe what wood was there.

The Court: Objection sustained. He covered that fully on th direct examination.

(Mr. Arctander:)

Q. Mr. Stensland stated that about five minutes elapsed fro the time you went down in the cabin until the explosion. Was tha correct? If not, what was the time?

Mr. McCord: He has already stated how long he was in the cabi and all about the explosion.

The Court: Objection sustained.

(Mr. Aretander:)

Q. Please state whether there were any words "Pearl Oil" stamped on any of the drums in the oil house?

Mr. McCord: I object to that as not proper redirect.
The Court: Objection sustained.

(Discussion.)

(Mr. Aretander:)

Q. Stensland stated, also, that at this time when the lunch was made, that Mr.—the fire was made for the lunch, that Mr. Utness was steering. What do you know about that?

322 A. No sir. Mr. John Jorgenson was steering.

Q. Did you hear the testimony of Mr. Sorvik, one of these witnesses, whose deposition was taken up in Cordova a couple of weeks ago, in which he stated—of course, he contradicted himself perhaps—but he stated, at one time, in there, that Mr. Emanual Olson, one of the witnesses for you, was not there a week after he came up, which was a week or two before you were hurt, or two or three weeks before you were hurt. Mr. Sorvik came up. I will ask you to state to the jury whether or not you saw Emanuel Olson around there at any time near the time you were hurt, and, if so, what time?

A. Yes sir, I saw him there four days before, and I saw him two days before I went—and the day before the accident, too, I saw him there.

Q. Four days before the accident and the day before the accident you saw him where?

A. In the blacksmith shop. He was helping the blacksmith.

Q. When what?

A. He was helping the blacksmith—blacksmith helper.

Q. You talked with him there at that time?

A. Yes sir.

Mr. McCord: I object to that as immaterial, Your Honor, whether he talked to him or not.

The Court: He has answered it.

323 Cross-examination.

(Mr. McCord:)

Q. I don't know whether I quite understand you or not. What can of gasoline was it that you say you took oil out of for priming purposes? Some can, you said, was on the boat; what can was it?

A. That was a little red can. She was copper color, she was made of copper, too.

Q. You said you had a small can, that held about a quart, and that you had gone up to the oil house to fill that with this gasoline for priming purposes. I understood you to say to counsel that you

took some oil for priming uses out of some can on the boat, didn't you?

A. Yes.

Q. What can was that?

A. It was a five gallon can.

Q. Well, was that the same can that you used in lighting the fire in the stove?

A. No sir, it was not the same can.

Q. Not the same can?

A. No sir.

Q. What can was it?

A. It was a five gallon can.

Q. A case?

A. Them cans they used to have in there.

Q. A regular five gallon gasoline square can, was it?

A. A square can.

(Witness excused.)

Mr. Aretander: I will offer the balance of the deposition
324 of Emanuel Olson, pages 35 and 36, from line 17 on — 35 I read up to line 17. Emanual Olson, this witness is.

Mr. Aretander here read from the deposition of Emanuel Olson beginning with line 17, page 35, and ending with line 11, page 36.

Mr. Aretander: Then page 38, commencing with the 25th line.

Mr. Aretander here read from said deposition, beginning with line 25, page 38, down to and including line 15 on page 39, whereupon

Mr. McCord: I object as incompetent, irrelevant and immaterial as to how many cans were there after the accident—how many cases of gasoline. The conditions there after the accident have no bearing on this case.

Mr. Aretander: That goes to those questions that Your Honor said are for the jury. These other witnesses were allowed to testify in chief without designating the time.

The Court: I will overrule the objection.

Mr. McCord: My objection goes to all this testimony.

The Court: Yes.

Mr. McCord: To conditions subsequent to the accident.

Mr. Aretander continued the reading of said deposition down to and including line 22, page 39, whereupon:

Mr. McCord: I object to that for the principal reason that——

Mr. Aretander: I will waive it.

Mr. McCord: It is too late.

Mr. Aretander: I will waive that. It is waived right in there when you objected before.

Mr. McCord: All right. Why did you keep on reading then?

Mr. Aretander: Because I didn't see it.

325 Mr. Arctander continued the reading of said deposition, beginning with line 26, page 39, reading down to and including line 18, page 40.

Mr. Arctander: I now offer in evidence the deposition of Andrew Lund, taken on the 30th day of March, 1918, at Mr. Hadley's office, all of us being present.

Mr. McCord: I thought you read part of that yesterday.

Mr. Arctander: No, I read nothing of that nor of Ingvald Sandanger's. Oh, I beg your pardon, Andrew Lund is not the one I meant. I have read part of it.

Pages 7 and 8 I wanted to read—commencing at line 21 on page 7 of the deposition of Andrew Lund:

Mr. Arctander hear read from said deposition, beginning at line 21, page 7, down to and including line 26 on the same page, whereupon:

Mr. McCord: Objected to——

Mr. Arctander (reading): "A. Yes sir."

Mr. McCord (continuing): —as incompetent, irrelevant and immaterial,' and move to strike the answer out.

The Court: Motion denied.

Mr. Arctander continued the reading of said deposition, beginning with line 28, page 7, and reading down to and including line 24, page 8.

Mr. Arctander: Now I will offer the depositions of Louis Stenson and Ingvald Sandanger. They have not been read—any portion of them. The depositions were taken before the same notary, at the same time as Andrew Lund's deposition.

Mr. Arctander here read from the deposition of Louis Stenson down to and including line 5, page 20, whereupon:

Mr. McCord: Objected to as incompetent, irrelevant and immaterial, too remote. He says he never went to Cordova
326 until the 10th of April, more than a month after this accident occurred, and his testimony as to the conditions in the oil house is wholly incompetent, irrelevant and immaterial, and too remote, as showing a condition that might have been changed, and, if it were changed, I don't believe that it is admi-sible as original evidence, at all, or any other sort of evidence.

The Court: I think the Supreme Court holds that where a change is made, you cannot show it.

Mr. Arctander: Only as against the testimony which Your Honor admitted before the jury and testified to by the other parties here, by the other depositions. They testified right along how it was.

The Court: I would have to instruct the jury to ascertain the condition after the accident. The testimony was indefinite, didn't show whether it was before or after. That was the only difficulty with that testimony. This testimony shows it was afterwards.

Mr. Arctander: Yes, but it is the rebuttal of testimony brought in on their part, showing all the way along. It was not limited to before, but was what it was in 1917. Both Mr. Peterson's, the captain, and Mr. Hawkinson are to that effect.

(Discussion.)

The Court: I think I will have to sustain the objection.

Mr. Arctander: Well, that sustains the objection to the whole of the deposition, then, I suppose?

The Court: As to the condition a month or more after the
327 accident.

Mr. Arctander: The following month, from the 10th of April to the 8th of May.

The Court: About the condition of the oil house.

Mr. Arctander: Of the oil house and what there was in it and how the drums were painted and how they were——

The Court: Sustain the objection.

Mr. Arctander: Well, I note an exception. There is also contained in this deposition testimony that he went in there himself to get it and he could not tell which was which, and that he got John Peterson——

Mr. McCord: I object, Your Honor, to counsel testifying as to what this witness testified to, as to what the deposition shows.

The Court: That was the month after?

Mr. Arctander: That was during the month after.

The Court: Objection sustained.

Mr. Arctander: Exception.

The Court: If it would be material at all, it would be material in your principal case.

(Discussion.)

Mr. Arctander: Ingvald Sandanger's deposition I offer, taken at the same time.

Mr. Arctander here read the first question and answer of Ingvald Sandanger's deposition on file herein, whereupon:

Mr. McCord: I object to that testimony or that deposition for the same reason. He didn't get up there until after the accident. He is testifying as to the conditions that took place subsequently.

The Court: The condition of the oil house?

328 Mr. Arctander: The condition of the oil house three days after the man was hurt.

Mr. McCord: Four days.

Mr. Arctander: Six days after he was hurt. No assumption that there was a continuation of the same conditions.

The Court: You are standing on pretty shaky ground.

Mr. Arctander: I am not afraid of the ground, Your Honor.

Mr. McCord: I object as incompetent, irrelevant and immaterial and not proper redirect or rebuttal testimony, and too remote; I mean testifying as to a state of facts subsequent to the accident.

The Court: That is a part of your case in chief. I think you ought to have put it in your own case, if at all.

Mr. Arctander: I figured that anything that was after the accident should not be in as a part of my case. I could put in the condition the day of the accident and any time before, but that this would be proper in rebuttal of their stating how it was and stating it all the time without confining it to the time of the accident. Every one of their witnesses did that. Peterson—there was none of them that confined it to that time.

The Court: Well, I will sustain the objection.

Mr. Arctander: Exception. Also that there was no difference until the time that he went out fishing, the same condition.

The Court: That was after?

Mr. Arctander: Afterwards.

Mr. McCord: What is that?

The Court: That there was no difference until after he
329 went out fishing.

Mr. Arctander: The same condition, no change in the oil house. Well, then, that is excluded—the whole of the deposition?

The Court: Well, if it is on that line, I sustain the objection to it.

Mr. Arctander: Well, that is all it is. He didn't go there until three days after his brother was hurt. He testifies fully as to the conditions as to what there was and what there was in there.

The Court: Is that all?

Mr. Arctander: That is all.

The Court: Does that conclude the testimony?

Mr. Arctander: Yes.

The Court: Is that all?

Mr. McCord: That is all.

(Court here adjourned until 9.30 o'clock tomorrow morning.)

Proceedings of September 11, 1918.

(The following proceedings were had in the absence of the jury:)

Mr. McCord: I want to make a motion while the jury is out.

Section 2, Article three, of the Constitution of the United States, extends the judicial power of the United States to all cases in
330 admiralty and maritime jurisdiction. Section 8 of Article one of the Constitution of the United States gives Congress power to make all laws necessary and proper to carry into execution the powers vested in the federal government. Sections 24 and 256 of the United States Judicial Code give the federal district courts exclusive judicial cognizance of civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right to a common law remedy where the common law remedy is competent to give it.

Section 18 of the Act of June 26, 1884, 22nd Statutes at Large, 57, provides for a limitation upon the liability of shipowners for debts and liabilities arising through the operation of a ship, and provides

that shipowners shall not be liable for more than the value of the vessel with the current freight pending.

Plaintiff in this case was a seaman, and while engaged upon the vessel of the defendant, in Alaska waters, suffered an injury while in the performance of his duties as a seaman on board the vessel. His injury is maritime. His right to recover is based upon the maritime laws of the United States, as provided by the provisions of the Constitution of the United States and as provided by the provisions of the Acts of Congress, and as defined by the decision of the federal courts of admiralty of the United States and of the Supreme Court of the United States.

The defendant in this case claims the benefit of the above provisions of the constitution and of the acts of Congress and of the laws of the United States, and claims that the amount of the re-
331 covery of the plaintiff in this action must be limited to the amount of recovery fixed by the maritime laws of the United States as fixed by Congress, the constitution and the decision of the admiralty courts of the United States.

The plaintiff had the election to bring his action in the admiralty courts of the United States or in the common law courts of the state of Washington or of the United States. He elected to bring his action in the law courts of the state of Washington, but the amount of his recovery must be limited to the amount that he would have been entitled to recover in accordance with the provisions of the admiralty laws of the United States as fixed, determined and construed by the federal courts, and of the provisions of the Constitution of the United States and of the acts of Congress of the United States, as above enumerated. A denial to this defendant of the right to have the amount of the recovery of the plaintiff limited to the amount of recovery in such cases fixed by the maritime laws of the United States as construed by the federal courts, to a sum equal to plaintiff's wages for the term of his employment, for his medical and hospital expenses and the expense of his cure, aggregating, according to the uncontradicted evidence in this case, not to exceed the sum of $175, is a denial to this defendant of rights guaranteed to it by the above provisions of the Constitution of the United States and of the laws of Congress and of the rights under the law as construed and announced by the admiralty courts of the United States; it oper-
332 ates as a denial to the defendant of a right guaranteed to it under the laws of Congress of the United States, as above set forth; all of which rights and privileges guaranteed to the defendant under the above provisions of the constitution and of the acts of Congress this defendant claims. Any recovery in excess of such amount would be a denial of the rights of this defendant under the above provisions of the constitution, the acts of Congress and under the maritime law, and such recovery would be repugnant to the above provisions of the constitution, the laws of Congress mentioned, and to the maritime laws, as defined by the courts of the United States, and any allowance of a recovery in this case for the plaintiff in excess of the sum of $175 would constitute a deprivation of this defendant of its rights under the said provisions of the constitution and laws of

the United States above mentioned; all of which benefits, rights and privileges this defendant now at this time claims in this court, and asks the court to enforce such provisions in this case.

Wherefore, this defendant moves the court to take this case from the jury and to enter a judgment in favor of the plaintiff and against the defendant, for the sum of $175, and no more, said sum being, according to the uncontradicted testimony, the maximum amount to which the plaintiff is entitled to recover under the maritime laws of the United States, the laws of Congress and the Constitution of the United States, as above enumerated; or, in the alternative, the defendant moves the court to direct the jury to enter a verdict
333 in favor of the plaintiff and against the defendant for the sum of $175, and no more.

I was just putting it in a different form, Your Honor—the motion I made the other day.

The Court: The motion will be denied.

Mr. McCord: Allow an exception, Your Honor.

The Court: Bring in the jury.

(The jury here returned into the court room, whereupon the court read the instructions to the jury, which are on file herein.)

Counsel for the respective parties having addressed the jury, the following proceedings were had:

The Court: The jury will now retire with the bailiff, to deliberate upon your verdict.

(The jury here retired from the court room, whereupon:)

Mr. McCord: Ordinarily, Your Honor, I do not care when the verdict is entered, but I want to be present when this verdict is returned.

The Court: Will you be subject to call?

Mr. McCord: Yes sir.

The Court: All right.

Mr. McCord: I do not want it received until I am here, because I want to be present. I will be in my office.

The Court: We will try to get you if you are at leisure.

Mr. McCord: I will be at leisure.

(The jury returned into the court room at 3.45 o'clock p. m., September 11, 1918, whereupon the jury announced that it had agreed upon a verdict, the verdict was read, and, on the request of
334 counsel for defendant, Mr. McCord, the jury was polled, twelve jurors responding that the verdict returned was the verdict of the jury, but two of the jurors responding that it was not their individual verdict: Whereupon:)

The Court: It seems to be a ten to two verdict.

Mr. Lysons: I am an attorney of record, but I do not know anything about the case. I just happened in, Your Honor.

Mr. McCord: I will ask the court to direct the clerk to withhold the filing of the verdict, and withhold the entry of any judgment,

until I can file and serve a motion for a new trial and a motion for judgment non obstante. I have the motion for judgment non obstante prepared, in anticipation of this decision, Your Honor. If counsel will accept it, I can file it right now.

The Court: Well, the procedure is that the clerk will file the verdict, but will not enter judgment on it until you have an opportunity to file your motion.

Mr. McCord: What is that?

The Court: The procedure is that the clerk will file the verdict that is returned, but he will not enter up judgment on it until you have had an opportunity to make your motion.

Mr. McCord: Very well.

The Court: The verdict may be filed, and the jury will be excused from further consideration of the case.

Mr. McCord: I will serve this motion. (Handing paper to Mr. Lysons.) I will file this. I have already served it.

The Court: The clerk will withhold entering judgment on the verdict, pending this motion.

335 STATE OF WASHINGTON,
County of King, ss:

I, Mitchell Gilliam, one of the Judges of the Superior Court of the State of Washington in and for King County, and sitting in Department No. 4 of said court, and the Judge before whom the above entitled cause was tried, do hereby certify:

That the matters and proceedings embodied in the foregoing statement of facts are matters and proceedings occurring in said cause and the same are hereby made a part of the record herein.

I do further certify that the same contains all the material facts, matters and proceedings heretofore occurring in said cause, and not already a part of the record therein.

I do further certify that the foregoing statement of facts contains all of the evidence and testimony introduced upon the trial of said cause, together with all objections and exceptions made and taken to the admission or exclusion of testimony, and all motions, offers to prove and admissions, and rulings thereon; and that Plaintiff's Exhibits "A," "B," "C," "D" and "E," and Defendant's Exhibits "1," "2" and "3," hereto attached, are all the exhibits admitted upon the trial of said cause;

Counsel for plaintiff and defendant being present and concurring.

Done in open court this 19th day of March A. D. 1919.

MITCHELL GILLIAM,
Judge.

336 In the Supreme Court of the State of Washington.

No. 15407.

OLE SANDANGER, Respondent,

v.

CARLISLE PACKING CO., Appellant.

Certificate of Clerk.

I, C. S. Reinhart, clerk of the supreme court of the state of Washington, hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the above entitled cause as I have been directed by the defendant to certify to the supreme court of the United States.

In Testimony whereof I have hereunto set my hand and affixed the seal of said court at Olympia, this 23d day of December, 1920.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART,
Clerk of the Supreme Court of the State of Washington.

Filed in Supreme Court of Washington Feb. 19, 1921. C. S. Reinhart, Clerk.

15407.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Washington, Greeting:

Being informed that there is now pending before you a suit in which Carlisle Packing Company is appellant, and Ole Sandanger is respondent, No. 15407, which suit was removed into the said Supreme Court by virtue of an appeal from the Superior Court of the State of Washington, for King County, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court, and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-eighth day of January, in the year of our Lord one thousand nine hundred and twenty-one.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 28,029. Supreme Court of the United States, No. 672, October Term, 1920. Carlisle Packing Company vs. Ole Sandanger. Writ of Certiorari.

In the Supreme Court of the State of Washington, October Term, 1920.

No. —.

CARLISLE PACKING COMPANY, a Corporation, Appellant,

vs.

OLE SANDANGER, Respondent.

Stipulation.

It is stipulated that the certified transcript of the record in the above entitled case made by the Clerk of the Supreme Court of the State of Washington and now on file with the Clerk of the Supreme Court of the United States, may be taken and considered as a full re-

turn by the Supreme Court of Washington to the Writ of Certiorari issued by the Supreme Court of the United States in a cause pending therein in which Carlisle Packing Company is Petitioner and Ole Sandanger is Respondent.

KERR & McCORD,
Attorneys for Appellant.
CHADWICK, McMICKEN, RAMSAY & RUPP,
Attorneys for Respondent.

STATE OF WASHINGTON,
County of Thurston, ss:

I, C. S. Reinhart, Clerk of the Supreme Court of the State of Washington, hereby certify that the above and foregoing is a full, true and correct copy of the Stipulation in the above entitled cause as the same was filed on the 12th day of March, 1921 and now remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court, this 12th day of March, 1921.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART,
Clerk.

Supreme Court of the State of Washington.

In obedience to the writ of certiorari hereto attached and returned herewith, I hereby certify that the foregoing stipulation is a true copy of the stipulation on file in my office and the return to the writ of certiorari is made in conformity with the provisions thereof.

Witness my hand and the real of said Court hereto affixed, this 17th day of June 1921.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART,
Clerk Supreme Court of the State of Washington.

[Endorsed:] 195-21. 28,029.

[Endorsed:] File No. 28,029. Supreme Court U. S., October Term, 1921. Term No. 195. Carlisle Packing Co., Petitioner, vs. Ole Sandanger. Writ of certiorari and return. Filed June 23, 1921.

JAN 3 1921
JAMES D. MAHER,
Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1920

CARLISLE PACKING COMPANY,
a corporation,
Petitioner,

—vs—

OLE SANDANGER,
Respondent.

No. [redacted]

PETITION FOR WRIT OF CERTIORARI

JAMES A. KERR,
EVAN S. MCCORD,
JOSEPH N. IVEY,
Attorneys for Petitioner.

*Filed this*_____*day of November, 1920.*

JAMES D. MAHER, Clerk.

*By*_____*Deputy Clerk.*

LAW BRIEF PRINT SHOP—SEATTLE

In the Supreme Court of the United States

OCTOBER TERM, 1920

CARLISLE PACKING COMPANY, a corporation,
Petitioner,
—vs—
OLE SANDANGER,
Respondent.
No.———

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Carlisle Packing Company, respectfully represents:

1. The respondent instituted this action to recover damages for personal injuries alleged to have been sustained on the 8th of February, 1917, through

the negligence of the petitioner, while employed as a seaman on one of the motor boats of the petitioner near Cordova, Alaska. The amount sued for was $10,475.00.

2. The grounds of negligence as stated in the complaint were as follows:

"That on March 7, 1917, plaintiff was sent aboard a certain motor boat operated by defendant under the command of one Iver Stensland, which boat was engaged in procuring a load of sand to be used for construction work at the cannery; that sometime after dinner on said day it became the duty of plaintiff to start a fire in the sheet iron stove in the galley of said boat to heat dish water; that the wood provided was green, and that according to the general custom plaintiff poured kerosene thereon and lighted a match to start the fire.

"That by reason of gross carelessness and negligence of the defendant in keeping side by side in its oil house drums of gasoline and kerosene with no distinguishing marks, and by reason of the carelessness of the defendant's employees, including the captain in charge of the boat, the kerosene can used by plaintiff had been filled with gasoline instead.

"That by reason of such careless and negligent substitution of gasoline for kerosene, the plaintiff, having saturated the wood in the stove with what he believed to be kerosene, was about to light said fire with a match when a violent explosion took place and plaintiff was severely burned.

"That the defendant very negligently and contrary to the laws of Congress failed to provide any life preservers upon the boat; and by reason of such failure, plaintiff's burns were aggravated while vainly looking for such life preservers before jumping into the sea to extinguish the flames in his burning clothing." (Record, page —.)

The answer contained a general denial, together with the defenses of assumption of risk and contributory negligence.

3. The case was tried to a jury and a verdict rendered for $7,175.00. This sum was reduced by the lower court to $4,175.00. Upon the pleadings and bill of exceptions duly settled, and the record, the case was appealed to the Supreme Court of the State of Washington. On the 14th of September, 1920, the Supreme Court of the State of Washington filed an opinion in the case affirming the judgment of the Superior Court of the State of Washington for King County, in which court the action was instituted.

4. A petition for rehearing was filed by the petitioner and was denied by the Supreme Court of Washington on the 17th day of November, 1920. Judgment therefore, was not affirmed formally by the Supreme Court of Washington until the date of the denial of the petition for a rehearing. The opinion of the court is reported in ———— Pacific, page —.

5. The respondent, Sandanger, is a resident of the State of Washington. The petitioner is a corporation organized and existing under the laws of the State of Washington. It owns and operates a

salmon cannery near Cordova, Alaska, and conducts a fishing business, in connection with which it operates several motor boats. On and prior to March 7, 1917, the respondent was employed by petitioner in and about its cannery and also upon its motor boats as he might be directed. On that day he was assigned to duty upon one of petitioner's motor boats as one of the crew consisting of himself and three others, one Stensland being in command. The boat was 28 feet long with an enclosed cabin forward, in which there was a motor near the middle, and a bunk and bench along one side, and a bench along the other side on which sat a small sheet iron stove used for cooking meals for the crew. Under the bench on which the stove sat, but further forward, there was a one-gallon kerosene oil can. This can with kerosene in it had been furnished for the purpose of filling the lamps of the boat.

According to custom, kerosene was taken from the can and used to light fires in the small stove, that is, by first pouring a small quantity of the kerosene on some wood and then applying a lighted match to the wood. Respondent had worked upon this boat as a member of its crew on several former occasions and was well acquainted with its arrangement and equipment, including the kerosene oil can;

and also the custom of using kerosene from the can to start fires in the stove.

About seven o'clock in the morning of February 8, 1917, the boat left the cannery to go some twenty miles southwesterly for a load of sand. The boat arrived at its destination about noon. The boat was provisioned for the noon meal of the crew in view of the fact that the trip would take all day. One of the crew started a fire in the cook stove for the purpose of preparing the noon meal. The meal was prepared and served. By this time the boat had started on its homeward voyage. About an hour after the serving of the meal, respondent was directed by Stensland to start a fire in the stove to heat water to wash the dishes. He went into the cabin and placed some wood in the stove, took the kerosene oil can from its accustomed place and poured a small quantity of whatever was in the can on the wood and lighted a match and dropped it upon the wood in the stove. There was a flare-up, and as a result thereof the respondent was burned. For the injuries thus sustained he seeks to recover in this action.

The testimony is in conflict as to the time the kerosene was poured upon the wood. The witnesses for the petitioner testified that the fire used in cook-

ing the meal had not gone out but that hot coals were contained in the stove covered by ashes and that the pouring of the kerosene on the hot embers in the stove, the existence of which the respondent had knowledge, caused the flare-up and the resulting injury. This was denied by some of the witnesses for the respondent. There was no evidence as to whether the kerosene can contained kerosene or gasoline, but it is a conceded fact that the pouring of kerosene on heated embers would have produced the same result that would be produced from the similar use of gasoline.

It was also contended that the kerosene can was filled from time to time as it became empty, by Stensland, the master of the vessel; that he procured the kerosene from a 50-gallon drum kept in the warehouse of the petitioner on shore. There is a conflict in the testimony as to whether or not the kerosene drum in the warehouse was marked or identified so as to distinguish it from a similar drum containing gasoline kept in the same warehouse. The evidence was uncontradicted, however, that kerosene drums have the ends painted white and gasoline drums have their ends painted red. Respondent sought to establish that the contents of

the kerosene can was gasoline from the fact that the contents of the can were taken from one or the other of the drums in the warehouse.

6. The complaint alleged and the testimony without contradiction established that the plaintiff was a seaman at the time of his injury and the Supreme Court of Washington in its opinion so found.

The respondent, at the time of the injury was therefore engaged in the performance of a maritime service upon the motor boat of the petitioner. It was established by the evidence without contradiction that the respondent had been paid in full for his services under his maritime contract for the fishing season covering a period of several months; that his doctor's bills, hospital charges and medical attendance had likewise been paid by the petitioner from the time of his injury until his return to Seattle and that the total amount of his additional claims for medical attendance and drugs subsequent to his return to Seattle from Cordova amounted to the sum of $175.00.

7. At the conclusion of the testimony the petitioner moved the court for a directed verdict in favor of the plaintiff and against the defendant for the sum of $175.00 and no more, upon the grounds

and for the reason that the measure of damages was to be determined according to the maritime law and not according to the rules of the common law. The petitioner at the same time claimed immunity from liability for any elements of damages other than those elements of damages allowed under the maritime law in an action of this character. The petitioner contended that the respondent was not entitled in any event to recover for any elements of damage other than his wages for the season, his doctor's bills, hospital charges, medical attendance and the cost of his cure. All of these claims had been satisfied and paid by the petitioner except the sum of $175.00.

The petitioner claimed immunity under an authority exercised under the laws of the United States. A federal question was therefore necessarily involved. Petitioner claimed that such question should be determined in accordance with the law as expounded by the admiralty courts of the United States acting under an authority of the laws of the United States fixing the measure of damages on the part of a claimant injured in the performance of his duties under a maritime service.

The petitioner further claimed immunity under section 2, Article III of the Constitution of the

United States extending the judicial power of the United States to all cases of admiralty and maritime jurisdiction; and under section 8 of Article I of the Constitution of the United States, which gives Congress power to make all laws necessary and proper to carry into execution the powers vested in the government, or in any department or officer thereof; and under section 24 of the Judicial Code, which reads as follows:

"Sec. 24. The district courts shall have original jurisdiction as follows: * * *

"Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it; * * * "

36 U. S. Statutes at Large, 1091.

The petitioner further claimed immunity from liability for any damages in excess of those damages allowed under maritime law as expounded by the admiralty courts in pursuance of the Constitutional and Congressional authority above mentioned.

It was further urged that the respondent had an election of remedies only. He could go into the common law courts or into the admiralty courts for the redress of his wrongs but that the amount of his recovery must be limited by the maritime law regardless of the forum selected by him; that if the respondent had brought his action in the admiralty

courts, he would have been limited in his recovery to the wages of the voyage, his medical and hospital attendance and the cost of his cure, which the evidence established at a sum not in excess of $175.00, and that when the respondent selected the common law forum, he could recover no greater amount of damages than that fixed by the settled law of the admiralty courts.

8. The court denied the motion of the petitioner, allowing the petitioner an exception. (Bill of Exceptions, page 333.) The petitioner, after the denial of its motion for an instructed verdict, requested the court to instruct the jury that the measure of respondent's damages should be limited to the amount of his wages for the period of his employment, his hospital and doctor's bills and expenses of his cure. (Instruction, page 24; Bill of Exceptions, page 31.) The court refused such requested instruction and allowed an exception to the petitioner. After the rendition of the verdict, petitioner moved the court for judgment *non obstante*, raising the same grounds, which was likewise denied and an exception allowed. (Record, page —.)

9. In the Supreme Court of the State of Washington, orally and in its briefs, the petitioner again urged the same grounds. The Supreme Court of Washington, in its opinion, says:

"It does seem that respondent's employment and service on the day in question was maritime in its nature. We shall so assume in our disposition of the case, without further discussion of that question."

The court in its opinion, further says:

"Counsel for appellant invoke the federal statute defining the admiralty jurisdiction of the federal district courts * * * "

And quoted section 24 of the Judicial Code, and further says:

"Proceeding upon the theory that this statute saves to suitors merely the right to sue in the common law courts and avail themselves of the procedure of those courts, and does not enable such suitors to avail themselves in those courts, any more than in the federal admiralty courts, of the rules of substantive common law as controlling of their rights; counsel for appellant invoke the principles of maritime law as announced by Mr. Justice Brown, speaking for the Supreme Court of the United States in The Osceola, 189 U. S. 158."

The immunity under the maritime law claimed by the petitioner was fully considered by the Superior Court of King County, Washington, as well as by the Supreme Court of the State of Washington, as shown by its opinion, and such immunity was denied by the Supreme Court of Washington. The construction of the maritime law as announced by the Supreme Court of Washington was a construction different from the maritime law as expounded by the admiralty courts and the contention of the

petitioner was defeated by the construction of such maritime law by the Supreme Court of Washington.

The Supreme Court in its opinion, declined to restrict the amount of respondent's recovery to those elements for which recovery could be had under the measure of damages established by the admiralty courts. The respondent was permitted to recover, not according to the rules of maritime law, but according to the rules of the common law.

10. The Supreme Court of Washington, in its opinion said:

"We conclude that respondent's recovery in this case may be sustained upon the theory that his injuries were received in consequence of the 'unseaworthiness' of the boat upon which he was working."

But there was no evidence in the record tending to show any unseaworthiness. Interpreting the evidence in the most favorable light for the respondent, the injury could only have resulted from the improper and negligent instruction of Stensland to use kerosene in lighting the fire, or from the alleged negligence of Stensland in mistakenly putting into the kerosene can, gasoline instead of kerosene. In other words, there is no possible ground for the claim of unseaworthiness. If the injury resulted from the negligence of anyone, it was the negligence

of the master of the vessel. The question before the Supreme Court of Washington was identical with the question involved in the case of *Chelentis vs. Luckenbach*, 247 U. S. 372. In that case a seaman was washed overboard and his leg broken, as it was claimed, as a result of a negligent and improvident order given by a superior officer. The injury to respondent in this case could only have resulted from the negligent or improvident order of Stensland, his superior officer in directing him to use the kerosene in lighting the fire, or from the negligence of Stensland in permitting the kerosene can to contain gasoline instead of kerosene.

Yet, under the guise of alleged unseaworthiness the court in its opinion disregards the holding of this court in the *Chelentis* case and the uniform holdings of the admiralty courts and refused to apply the rules of the maritime law as expounded by such courts and applied the rules of the common law instead of the rules of the maritime law as to the measure of respondent's damages.

11. The record from the Supreme Court of Washington in this case has been ordered by the petitioner and is now in the course of preparation and will be forwarded to this court as speedily as possible. The remittitur from the Supreme Court of Washington will be sent to the lower court and

execution will issue thereon unless such judgment of the Supreme Court of Washington be superseded; that the respondent, Ole Sandanger, is insolvent and if the judgment in his favor be paid, the petitioner will be without remedy and will be denied the right to have determined by this court the immunity claimed by it as hereinbefore stated.

12. Your petitioner respectfully further represents that the questions embraced within the scope of this application are of great importance to those engaged in shipping and maritime endeavors; such questions involve matters of great importance to the public generally; they involve the rights of litigants generally. It is necessary to have them properly determined in order that there may be uniformity in the decisions of the state courts in the interpretation of the maritime law. Unless such questions be finally decided by this court, litigants can be deprived of their rights under the maritime law by applying the rules of the common law under the guise of unseaworthiness where none exists.

Wherefore, your petitioner respectfully prays and petitions:

(1) For an order of supersedeas staying execution of the judgment rendered in this cause, upon the execution by petitioner to the respondent of a bond in such amount and upon such conditions as may be fixed by this court, which bond the peti-

tioner is able and willing to furnish in such amount and conditioned as may be prescribed by this court.

(2) That a writ of certiorari may be issued out of and under the seal of this court directed to the Supreme Court of the State of Washington, commanding said court to certify and send to this court upon a certain day to be therein designated, a full and complete transcript of the record and all proceedings of said Supreme Court of Washington in the case therein entitled: "Ole Sandanger, Respondent vs. Carlisle Packing Company, Appellant, No. 15407," and to withhold any further action or order in said cause until the further order of this court to the end that the case made be reviewed and determined by this court; and that your petitioner may have such other and further relief and remedy in the premises as to this court may seem appropriate; and that the judgment of said Supreme Court of Washington in this case, and every part thereof, may be reversed by this Honorable Court.

And your petitioner will ever pray.

CARLISLE PACKING COMPANY.
By EVAN S. McCORD,
Attorney for Petitioner.

JAMES A. KERR,
EVAN S. McCORD,
J. N. IVEY,
Attorneys for Petitioner.

STATE OF WASHINGTON,
COUNTY OF KING. } ss.

E. S. McCORD, being first duly sworn, deposes and says:

That he is one of the attorneys for the Carlisle Packing Company, the petitioner above-named, and as such, has had personal charge of the case in the foregoing petition mentioned in the Superior Court of the State of Washington for King County, and also in the Supreme Court of the State of Washington; that he has read the foregoing petition by him subscribed and that the facts therein contained are true to the best of his information and belief.

E. S. McCORD.

Subscribed and sworn to before me this ——— day of November, 1920.

J. N. IVEY,
Notary Public in and for the State of Washington, residing at Seattle.

JAN 3 1921
JAMES D. MAHER
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1920

CARLISLE PACKING COMPANY,
a corporation,
Petitioner,

—vs—

OLE SANDANGER,
Respondent.

No. 6[redacted]1

Brief of Petitioner on Petition for Writ of Certiorari

JAMES A. KERR,
EVAN S. MCCORD,
JOSEPH N. IVEY,
Attorneys for Petitioner.

*Filed this*_____*day of November, 1920.*

JAMES D. MAHER, Clerk.

*By*_____*Deputy Clerk.*

LAW BRIEF PRINT SHOP—SEATTLE

In the Supreme Court of the United States

OCTOBER TERM, 1920

CARLISLE PACKING COMPANY, a corporation,
Petitioner,
—vs—
OLE SANDANGER,
Respondent.
No.———

Brief of Petitioner on Petition for Writ of Certiorari

The facts are stated in the petition which accompanies this brief.

ARGUMENT

The respondent was injured while engaged in the performance of a maritime service upon a vessel owned by the petitioner while plying in Alaskan

waters. He instituted his action for such damages in the Superior Court of King County, Washington, a common law court, and sought to have his damages measured by the rules of the common law rather than by the rules of the admiralty courts of the United States. The petitioner in the trial court, as well as in the Supreme Court of Washington claimed immunity from liability for any elements of damage other than those elements of damages allowed under the maritime law in an action of this character.

The petitioner contended that the respondent was not entitled in any event to recover for any elements of damage other than his wages for the voyage, his doctor's bills, hospital charges and medical attendance and the cost of his cure. All of such claims were satisfied prior to the trial with the exception of the sum of $175.00. The petitioner paid for all of the doctor bills, hospital charges, medical attendance and cost of cure except the sum of $175.00, which was the total amount claimed by respondent on account of the items for which he could recover under the maritime law. A federal question was presented to the Supreme Court of Washington and passed upon by that court.

The court in its opinion says:

"It does seem that respondent's employment and service on the day in question was maritime in its nature. We shall so assume in our disposition of the case, without further discussion of that question."

And further the court says in its opinion:

"Proceeding upon the theory that this statute saves to suitors merely the right to sue in the common law courts and avail themselves of the procedure of those courts, and does not enable such suitors to avail themselves in those courts, any more than in the federal admiralty courts, of the rules of substantive common law as controlling of their rights; counsel for appellant invoke the principles of maritime law as announced by Mr. Justice Brown, speaking for the Supreme Court of the United States in The Osceola, 189 U. S. 158."

The immunity claimed under the maritime law was presented first upon a motion for an instructed verdict in favor of the respondent and against the petitioner for the sum of $175.00, being the maximum amount for all damages which the respondent could claim under the maritime law. Immunity was further claimed in the request for an instruction to the jury and later upon a motion for a new trial and motion for judgment *non obstante*. Immunity was further claimed by the briefs in the Supreme Court and was passed upon and considered by the Supreme Court. There can be no doubt that the question was properly raised.
Donohue vs. Vosper, 243 U. S. 59.

The work about which the respondent was engaged at the time of his injury was maritime in its nature. His employment was a maritime contract. The injuries received were likewise maritime and the rights and liabilities of the parties were matters clearly within the admiralty jurisdiction. The substantive rights of the respondent are controlled by the rules of maritime law. He had a choice of remedies. He could go into the common law courts or into the admiralty courts, at his election. He selected the common law court, and under the decision of the Supreme Court of Washington he was allowed to recover according to the rules of the common law. This court in *Chelentis vs. Luckenbach*, 247 U. S. 372, has held that:

"A contract of fireman on steamship is maritime in its nature and under the maritime law his recovery for injuries incurred while in the service of the ship is limited to wages, maintenance, and cure."

The respondent in this case, as the record shows, was a seaman and his contract was maritime. The *Chelentis* case is directly in point and expressly holds that in an action of this kind prosecuted in the common law courts, the plaintiff is limited to the amount of the recovery fixed by the maritime law. The entire subject is covered by the *Chelentis* case and by the case of *Southern Pa-*

cific Co. vs. Jensen, 244 U. S. 205. In the *Jensen* case, this court says:

"Considering our former opinions, it must now be accepted as settled doctrine that, in consequence of these provisions (referring to Article III, Sec. 2 of the Constitution), Congress has paramount power to fix and determine the maritime law which shall prevail throughtout the country. And, further that, in the absence of some controlling statute, the general maritime law, as accepted by the federal courts, constitutes part of our national law, applicable to matters within the admiralty and maritime jurisdiction."

In the case of *Lottawanna*, 21 Wallace 558, this court said:

"That we have a maritime law of our own, operative throughout the United States, cannot be doubted. The general system of maritime law which was familiar to the lawyers and statesmen of the country when the Constitution was adopted was most certainly intended and referred to when it was declared in that instrument that the judicial power of the United States shall extend 'to all cases of admiralty and maritime jurisdiction.' One thing, however, is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several states, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the states with each other or with foreign states."

The Supreme Court of Washington, referring to the *Chelentis* case, says:

"A seaman was washed overboard, and his leg broken, as it was claimed, as a result of a negligent and improvident order given by a superior officer. It was held that he could not recover as for injuries received 'in consequence of the unseaworthiness of the ship' and therefore could not recover damages at all as for negligence. Plainly that was not a case of unseaworthiness of the ship."

We think the court was clearly in error in attempting to distinguish the *Chelentis* case from the case at bar. In the *Chelentis* case the liability of the defendant was predicated upon the negligence of a superior officer in giving an improvident order. In this case the liability was predicated upon the negligence of Stensland, the master of the ship, in doing an improvident or negligent act, in putting the gasoline instead of kerosene in the kerosene can. In both cases the gravamen of the charge was the negligence of the master; in the one case in the giving of an improvident order and in the other in doing an improvident act. It cannot even be plausibly urged that substitution of gasoline for kerosene was due to any other cause than that of the negligence of Stensland, the master of the vessel.

In the case, however, of the *Southern Pacific Company vs. Jensen, supra*, the plaintiff was operatting a small electric freight truck. His work consisted of driving the truck into the steamship El Oriente, where it was loaded with cargo, then driving the truck out of the vessel upon a gangway connecting the vessel with a pier in the river and thence upon the pier, where the lumber was unloaded from the truck. The vessel was about ten feet distant from the pier. Immediately before the accident he started out of the ship with his truck loaded with lumber, a part of the cargo of the steamship El Oriente. He stood on the rear of the truck, the lumber coming about to his shoulder. In driving out of the port in the side of the vessel and upon the gangway, the truck became jammed against the guide piece on the gangway. He then reversed the direction of the truck and proceeded at third or full speed backward into the hatchway. He failed to lower his head and his head struck the ship at the top line, throwing his head forward and causing his chin to hit the lumber in front of him. His neck was broken and in this way he met his death. The injury would not have occurred had the opening to the gangway been higher. It might just as well have been contended in the *Jensen* case as in this case that the vessel was unseaworthy.

In the case at bar, the owner of the vessel furnished kerosene for use in the can for lighting the lamps on the vessel. The substitution of gasoline for kerosene in the can which was involved in the explosion resulting in the injury, was due unquestionably to a mistake or negligence of the master. We fail to understand how any question of unseaworthiness is involved in this controversy. Under the reasoning of the Supreme Court of Washington in this case, Jensen would have had the right to recover general damages in an action at law. This court held precisely the contrary. In the case of *Hanrahan vs. Pacific Transport Co.*, 262 Fed. 951, it was expressly held that the ship was not unseaworthy because of a temporary absence of a hand-rail while she was lying alongside the wharf discharging cargo, so as to entitle a seaman injured thereby to recover damages. A writ of certiorari in the *Hanrahan* case was denied by this court. (40 Supreme Court Reports, 345.) In that case the plaintiff was a member of the crew as in this case. The vessel being in port and fast to the pier, plaintiff returned at night from shore leave and while walking on the upper deck to his quarters, fell overboard, suffering personal injuries, for which he brought his common law action. The reason why he was injured was that by the negligence of

the ship's officers a certain hand-rail was not in place. This rail consisted of wire rope passing through stanchions, which were insertable in sockets built into the deck. It was erected to take the place of a bulwark. The court said that the jury might have found that the plaintiff's injuries were caused or contributed to by the absence of the hand-rail. Plaintiff asked to go to the jury on the theory that the vessel was unseaworthy by reason of the failure of those in charge of her to maintain the hand-rail in place. The court further said in the *Hanrahan* case:

"At the time of this accident, however, plaintiff's relation to defendant resulted from a maritime contract, viz., his hiring as a seaman. The scope and effect of such contract is defined and regulated solely by the maritime law, which is a different system of jurisprudence from the common law, and neither subordinated to nor controlled thereby." (Citing *Southern Pacific Co. v. Jensen, supra.*)

No definition of unseaworthiness announced by any of the courts is broad enough to include the conditions on board the vessel upon which respondent was injured. The injury to respondent resulted from the action of Stensland in putting gasoline in the can instead of kerosene. The present case cannot be distinguished from the *Chelentis* case.

Yet under the guise of alleged unseaworthiness the Supreme Court of Washington in its opinion disregards the holdings of this court in the *Chelentis* case, as well as the uniform holdings of the admiralty courts and refused to apply the rules of the maritime law as expounded by such courts and applied the rules of the common law instead of the rules of the maritime law as to the measure of respondent's damages. It is insisted, however, that the immunity is not claimed under the Constitution and laws of the United States for the reason that there is no express statutory authority fixing the measure of liability for injuries sustained by a seaman in the performance of a maritime contract.

In the case of *Tullock vs. Mulvane*, 184 U. S. 497, this court answers the contention that the immunity cannot be claimed in the absence of statutory regulation. In that case an action had been brought upon an injunction bond executed in an equity cause pending in a federal court. The injunction bond was sued upon in a state court of Kansas. Under the local law the plaintiff was entitled to damages for attorney's fees expended by him in the proceeding in which the injunction was issued. The Kansas court permitted a recovery for such attorney's fees, contrary to the rules determining the measure of damages or recovery upon an injunc-

tion bond in the federal courts. There was no statutory regulation upon the subject of injunction bonds in federal courts but the authority of the federal courts in establishing the rule as to measure of damages was an authority exercised under the laws of the United States. This court held that the amount of the attorney's fees could not be recovered even in a state court. The reasoning in that case is applicable to the facts in this case.

The admiralty courts have established a fixed rule as to the measure of damages in such cases. They did so under the Constitution and laws of the United States in the exercise of an authority thereunder. In the *Tullock* case this court says:

"It is insisted, however, that such is not the case because whilst it is true the courts of the United States exercise their authority under the Constitution and laws of the United States that as there is no express statutory authority regulating injunction bonds, therefore in determining the measure of liability on them no claim of immunity arising from an authority exercised under the United States can arise. But this is a mere form of restating the contention we have already disposed of. The test is not the particular source or form by which the authority of the United States has been conferred or is exerted, but whether such authority existed and was exercised and an immunity is claimed under it."

Under the authority of *Tullock vs. Mulvane*, it is clear that the immunity was claimed under an

authority exercised under the laws of the United States, under Section 237 of the Judicial Code as amended September 6, 1916, 39 Stat. 726 C-448. The remedy of the petitioner is by writ of certiorari and not by writ of error. (*Philadelphia & Redding Coal Co. vs. Gilbert*, 245 U. S. 162.) It is true that the writ of certiorari is granted or refused in the exercise of a sound discretion. The petitioner is not entitled to the issuance of a writ as a matter of right, but we contend that in this case it should be granted in the exercise of a sound discretion. The questions embraced within the scope of this application are of vital importance to all who are engaged in shipping and maritime endeavors. Such questions involve matters of great importance to the public generally as well as the rights of litigants generally. It is necessary to have them properly determined in order that there may be uniformity in the decisions of the state courts in the interpretation and administration of the maritime law. Unless such questions are finally decided by this court, litigants can be deprived of their rights under the maritime law by applying the rules of the common law.

It is respectfully requested that this writ of certiorari be granted to the end that there may be

uniformity in the decisions of state courts in such cases and to the end that there may be uniformity between the state courts and the federal courts in the determination of the measure of damages for personal injuries sustained in the performance of a maritime contract.

EVAN S. McCORD,
JAMES A. KERR,
JOSEPH N. IVEY,
Attorneys for Petitioner.

Office Supreme Court, U. S.
FILED
FEB 7 1922
WM. R. STANSBURY
CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1921.

No. 195.

CARLISLE PACKING COMPANY,
Petitioner,

vs.

OLE SANDANGER,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

BRIEF OF PETITIONER.

JAMES A. KERR,
EVAN S. MCCORD,
JOSEPH N. IVEY,
J. HARRY COVINGTON,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

BRIEF OF PETITIONER.

STATEMENT OF THE CASE.

The Record.

This case is before the Court on a writ of certiorari to the Supreme Court of Washington to review a judgment of that Court which affirmed a

judgment of the Superior Court of the State of Washington for King County.

The respondent, Sandanger, instituted an action against the petitioner, the Carlisle Packing Company, to recover damages for personal injuries alleged to have been sustained by him on the 7th of March, 1917, through the negligence of the petitioner, while he was employed as a seaman on one of the motor boats of the petitioner near Cordova, Alaska.

The case was tried before a jury, which on the 11th of September, 1918, returned a verdict in favor of the plaintiff for $7,175. (Rec. p. 30). The trial court thereafter, with the consent of the plaintiff, reduced this verdict to $4,175, and entered judgment thereon. (p. 34).

The case was taken on appeal to the Supreme Court of the State of Washington, which court on the 14th of September, 1920, affirmed the judgment of the trial court. (p. 159). The opinion of the State Supreme Court (p. 159) is reported in 112 Wash. 480.

The petition of the Carlisle Packing Company for a rehearing and hearing *en banc* was denied by the Supreme Court of the State of Washington, on the 17th of November, 1920 (p. 166). Thereafter the petitioner filed its petition in this court for a writ of certiorari to the Supreme Court of the State of Washington, which was granted on the 24th of January, 1921. (p. 366.)

Questions Involved.

The substantial questions involved in this case are:

(First) Whether, if the master of a gasoline launch negligently fills with gasoline instead of kerosene a can used on the launch to aid in starting fires in the galley, (and the evidence is conflicting whether the can was not in fact filled with kerosene) this can be said to make the launch "unseaworthy" so that a seaman, who was burned from trying to start a fire with the contents of the can, may recover damages beyond the cost of his maintenance and cure on the theory that the owners are liable to an indemnity for his injuries in consequence of the unseaworthiness of the ship, and

(Second) Whether, in any event the owners could be liable beyond the value of the vessel and the freight money for the current voyage, under Section 4283 Revised Statutes.

The Facts.

The respondent Ole Sandanger is a resident of the State of Washington. The petitioner is a corporation created and existing under the laws of the State of Washington, with its general offices in Seattle. It owns and operates a salmon cannery near Cordova, Alaska, in connection with which, it owns and operates several motor boats.

The respondent Ole Sandanger was an employee of the packing company in and about its cannery near Cordova from the 13th of February, 1917, until the 7th of March, 1917. He had been employed part of the time as an engineer on one of the company's small boats, the C. P. C. 2, a gasoline launch about twenty-eight feet long, of about three tons capacity with an enclosed cabin forward, in which there was a motor near the middle, a bunk and bench along one side, and a bench along the other side on which sat a small sheet-iron wood burning stove (pp. 80, 82, 174, 144, 136).

On the 7th of March, Sandanger was one of three members of the crew aboard this boat which left the cannery about seven o'clock in the morning, in charge of Iver Stensland as Captain (p. 181). They went for some sand to be used in concrete construction work at the cannery (p. 136). They travelled some twenty miles southwesterly to Boswell Bay, where they loaded their sand, leaving there about twelve o'clock (p. 140). Shortly after leaving, Captain Stensland and Isaac Utness, the Engineer, prepared the noon meal for the crew and served it on the deck of the vessel (pp. 140, 180, 85). After the crew had finished their meal they cruised along on their way home, spending from an hour and a half to two hours at leisure shooting at wild ducks and eagles (pp. 141, 182).

There is considerable conflict in the evidence as to just what time the noon meal was prepared and served, and as to the length of time that elapsed

between the time the noon meal was finished and the time Sandanger, the respondent, was instructed to light the stove in the cabin and heat water and wash the dishes. The time of preparing the noon meal is fixed between eleven o'clock and twelve o'clock (pp. 85, 100, 140, 180), the time spent at leisure is fixed from half an hour to two hours and a quarter (pp. 88, 102, 140, 182). At some time subsequent to the finishing of the noon meal the Captain directed Sandanger to go into the cabin and light a fire in the small sheet-iron stove, heat water, and wash the dishes. The time this order was given varies according to the testimony of the witnesses from near one o'clock to two o'clock (pp. 88, 102, 141, 182). Sandanger in starting the fire used part of the contents of a small can which sat in the cabin from four to six feet from the cook stove (pp. 87, 150, 191). This can ordinarily contained kerosene that was used to start the fire in the stove and to fill the lights and lanterns about the boat, and had the letters "Coal Oil" painted on it (pp. 92, 95, 148, 190).

On the day before, March 6th, Captain Stensland filled the can with kerosene from a fifty gallon drum in the oil house on the dock near the cannery (p. 149). That day he an Isaac Utness, the Engineer, had used part of the contents of the can to fill the lamps and lanterns on the boat and to start a fire to cook their noon and evening meals (pp. 86, 92, 148). The Captain's testimony is that the can had not been refilled on the day of

the 7th or subsequent to the time he filled it on the 6th with kerosene (p. 149).

Addenda, p. 6.

A witness for the respondent ~~defendant~~ testified on the other hand that the can was empty on the evening of the sixth; that there was no oil in it to light the lanterns. (p. 86)

The theory of the respondent's case is that the can on this day contained gasoline instead of kerosene, and that as a result of the negligence of the Packing Company in placing gasoline in the can instead of kerosene it became responsible for the full amount of his damage suffered. The complaint sets out this negligence in the following language (p. 2.):

> "That by reason of gross carelessness and negligence of the defendant in keeping side by side in its oil house drums of gasoline and kerosene with no distinguishing marks, and by reason of the carelessness of the defendant's employees, including the captain in charge of the boat, the kerosene can used by plaintiff had been filled with gasoline instead."

The kerosene was stored in a fifty or one hundred gallon drum in the oil house, and there is a conflict in the evidence as to whether or not there was another fifty or one hundred gallon drum stored there containing gasoline. If both, they were lying on a rack alongside each other (pp. 44, 62, 98, 112, 119, 149, 127, 176, 266). There is also

a conflict in the evidence as to whether or not these drums were properly marked to distinguish them. The petitioner's witnesses testify that the drum containing kerosene was painted white on the end and had the words "kerosene" or "Pearl Oil" painted on the side of the drum in conformity to the regulations of the Interstate Commerce Commission (pp. 112, 118, 123, 128, 149, 151). The respondent's witnesses testify that there were two drums and that there were no distinguishing marks on them (pp. 99, 45, 63, 177, 266).

There is expert testimony that kerosene will explode if poured on hot embers of a fire and then ignited with a match (p. 343), and the contention of the petitioner was that Sandanger poured kerosene from the gallon can on the smouldering embers remaining from the fire that had been previously kindled in the stove to cook the noon meal. The contention of the respondent is that the fire had completely gone out in the stove and it was stone cold, and that under the testimony of the experts only gasoline would explode under those circumstances when ignited. The testimony of the witnesses on the one side is that the stove must have been hot when Sandanger attempted to light a fire in it, and the testimony on the other side is that the stove was cold (pp. 146, 150, 188, 189).

After the accident occurred the boat proceeded on its way home and arrived there at or about three o'clock in the afternoon of the same day. Sandanger was immediately removed to the hos-

pital, where he was confined for about a month, after which he was employed as a gateman at the cannery until he left (pp. 205, 142).

The Packing Company paid all expenses of his treatment and care at the hospital, and paid him his wages through from the time of his original employment until he left the employ of the Company in July of that year (pp. 212, 282). The evidence discloses that he subsequently became indebted to the extent of $175.00 for additional expenses of cure after his return to Seattle upon completing his employment with the Packing Company (p. 282).

Federal Question Raised in Courts Below.

At the close of plaintiff's evidence on the trial of the case, and again at the close of all the evidence, the petitioner moved for a directed verdict in favor of the plaintiff and against the defendant for the admitted amount due the plaintiff for additional expenses of cure as a result of his injuries, amounting to $175.00. Both these motions were denied and exceptions allowed (pp. 324, 363). The petitioner after the denial of its motion for an instructed verdict requested the court to instruct the jury that the measure of respondent's damages should be limited to the amount of his wages for the period of his employment, his hospital and doctor's bills and expenses of his cure (pp. 17, 21).

The court refused such requested instructions and allowed an exception to the petitioner.

After the rendition of the verdict, the petitioner moved the court for a judgment *non obstante veridicto*, for the admitted amount due of $175.00 for additional costs of cure, which motion was in the alternative for a new trial. This motion was denied by the court, and an exception allowed (pp. 30-33).

The petitioner took the position in its several motions and requested instructions to the jury, that the respondent at the time of his injury was engaged in the performance of a maritime service upon the motor boat of the petitioner, and that having been paid in full for his services under his maritime contract for the fishing season covering a period of several months, likewise his doctor's bills, hospital charges and medical attendance until his return to Seattle from Cordova, the respondent could only hold the petitioner responsible in any event for the additional admitted amount due the respondent for costs of cure in the sum of $175.00, because the petitioner claimed immunity under Section 2, Article III, of the Constitution of the United States extending the judicial power of the United States to all cases of admiralty and maritime jurisdiction; and under Section 8 of Article I of the Constitution of the United States, which gives Congress power to make all laws necessary and proper to carry into execution the powers vested in the government, or in any

department or officer thereof; and under Section 24 of the Judicial Code, which reads:

> "Sec. 24. The district courts shall have original jurisdiction as follows; * * *
>
> "Third, Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common-law is competent to give it; * * * "

The petitioner claimed immunity from liability for any damages in excess of those damages allowed under maritime law as expounded by the admiralty courts in pursuance of the Constitutional and Congressional authority above mentioned. And the petitioner contended further that as the respondent had an election of remedies only, he could go into the common-law courts or into the admiralty courts for the redress of his wrongs, but that the amount of his recovery must be limited by the maritime law, regardless of the forum selected by him; that if the respondent had brought his action in the admiralty courts he would have been limited in his recovery to the wages of the voyage, his medical and hospital attendance and the cost of his cure, which the evidence established without contradiction at a sum not in excess of $175.00, and that when the respondent selected the common-law forum, he could recover no greater amount of damages than that

fixed by settled law of the admiralty courts (pp. 17-19, 30-33, 324-5, 361-3).

Petitioner throughout the progress of the case contended in the alternative that there could be no recovery under the Revised Statutes, Sections 4283 and 4289, in excess of $1500, the undisputed value of the vessel (pp. 18, 338).

In the Supreme Court of the State of Washington, orally and in its briefs, the petitioner urged the same limitation of liability under the Constitution and statutes of the United States and the decisions of the federal courts thereof (p. 163).

The Supreme Court of the State of Washington held that Sandanger's recovery might be sustained upon the theory that his injuries were received in consequence of the "unseaworthiness" of the boat upon which he was working, a negligent furnishing of gasoline in place of kerosene creating "unseaworthiness" in the eyes of the court, although if there was any negligence it was that of the master.

SPECIFICATION OF ERRORS.

Errors of the Superior Court for King County.

1. The court erred in denying petitioner's motion for an instructed verdict at the close of plaintiff's evidence. (p. 324.)

2. The court erred in denying petitioner's motion for an instructed verdict at the close of all the evidence. (p. 363.)

3. The court erred in denying appellant's motion for judgment *non obstante veredicto* and in the alternative for a new trial. (p. 30.)

4. The court erred in instructing the jury as follows (p. 21):

> "If on the other hand the jury believes from the evidence either that defendant did not place the two drums side by side in the oil house, or if they were so placed that the contents of each was properly designated on the outside of the drums, or if not so designated that an ordinarily careful employer, under the same circumstances would not so designate the contents of the drums, but if the jury at the same time finds that the foreman of defendant in charge of the boat, Iver Stensland, could before he filled the coal-oil can from the drum have by a simple test found out whether it was coal-oil or gasoline he filled the can with, and if the jury further finds that he did not before filling the can with gasoline, if you believe that he did in fact fill it with gasoline, make any such test, or in any manner try to find out what oil he got, and if the jury further believes that an ordinarily careful foreman or man in charge of the boat would not under the same circumstances, have filled the can or placed it where he did place it, without first finding out whether it was coal-oil or gasoline he filled the can with, then and in that

case the jury would be justified in finding said Stensland guilty of negligence, and if the jury believe that by reason of such negligence on Stensland's part plaintiff was, without any negligence on his own part, injured and burned, then in that event it should find a verdict for plaintiff in such sum as would fairly compensate him for the damages he sustained by reason of such injury so caused by said Stensland's negligence.

5. The court erred in instructing the jury as follows (p. 23):

"If you find under the evidence produced and under the instructions given you by the court that plaintiff is entitled to a verdict, then the amount which your verdict should give him becomes important. If entitled to a verdict at your hands at all the court instructs you that he is entitled to receive full and fair compensation. .....

"2nd. For all loss he has sustained in and to his earning capacity as a fisherman and mariner which earning capacity is by the pleadings admitted to be the sum of One Hundred Dollars ($100.00) per month, the compensation for loss under this head, however, not to exceed the sum of Two Thousand Dollars ($2,000), including any future loss to such earning capacity, if you under the evi-

dence find, that there is liable to be any future loss of earning capacity.

"3rd. Full and fair compensation for his suffering and for all pains of body and mind caused him by the injuries as well as for any and all temporary or permanent disfigurement, and for any temporary or permanent maiming of any members of his body, if you find there was any such, also for any other temporary or permanent injuries, which you should find that he has sustained, the damages under this head, however, not to exceed the sum of Eight Thousand Dollars ($8,000)."

6. The court erred in refusing to instruct the jury as follows (p. 17):

"If you find from the evidence in this case that Iver N. Stensland, at the time of the injury to the plaintiff on the 7th of March, 1918, was the master of the vessel upon which he was injured, and that the said Stensland filled the gallon can on the morning of the injury with gasoline instead of kerosene, and that the defendant had in its oil house at its cannery at Cordova a drum of kerosene and a drum of gasoline, side by side, and that Stensland by the exercise of ordinary prudence or by the exercise of the ordinary tests of smelling or by pouring the same in his hand, could have determined before he placed the oil in the

gallon can whether it was gasoline or whether it was kerosene, and failed to do so, and by mistake placed in the gallon can gasoline instead of kerosene, and subsequently placed the said gallon can in the cabin of the vessel and that the substitution of gasoline instead of kerosene in the gallon can was due to the negligence of said Stensland, and that the defendant company had no personal knowledge of the mistake or negligence of the said Stensland, then I instruct you that your verdict must be for the plaintiff, but in a sum not in excess of One Hundred Seventy-five Dollars ($175.00)."

7. The court erred in refusing to instruct the jury as follows (p. 18):

"The Congress of the United States has enacted a law providing that ship owners shall not be liable for any debts, obligations or liabilities arising on board a ship beyond the value of the ship and the freight money for the current voyage during which the debt or liability arose. You will first determine the value of the vessel of the defendant upon which the plaintiff was injured and the freight money, if any, that the vessel earned on the voyage upon which plaintiff was injured and under no circumstances can your verdict be for a sum in excess of such value of said vessel and freight money for said voyage."

8. The court erred in refusing to instruct the jury as follows (p. 18):

> "The seaworthiness of a vessel is defined to be in maritime law, the sufficiency of the vessel in materials, construction, equipment, officers, men and outfit for the trade or service in which it is employed, and if you find from the evidence in this case that the vessel of the defendant at the time she started upon the voyage upon which the plaintiff was injured was in a seaworthy condition as measured by the foregoing definition, then I instruct you that the plaintiff is limited in his recovery to not in excess of One Hundred Seventy-five Dollars. The test of seaworthiness is whether the vessel is reasonably fit to perform the service undertaken by the master, and if you find from the evidence in this case that the vessel upon which the plaintiff was injured was reasonably fit for the service intended at the commencement of the voyage, or that the defendant exercised due diligence in attempting to make her seaworthy for said voyage, then I instruct you that the plaintiff cannot recover in excess of One Hundred Seventy-five Dollars and your verdict must be in an amount not in excess of said sum."

Errors of the Supreme Court of the State of Washington.

9. The court erred in holding that Sandanger's recovery might be sustained upon the theory that his injuries were received in consequence of the "unseaworthiness" of the boat upon which he was working. (p. 166.)

10. The court erred in not reversing the case with instructions to enter a judgment for One Hundred Seventy-five Dollars, the unpaid cost of Sandanger's cure.

11. The court erred in holding, if Sandanger could recover indemnity for his injuries, that his recovery could exceed the value of the vessel and freight money for the voyage.

ARGUMENT.

(1) If under the Maritime Law, whether found in Federal statutes or in the decisions of Federal courts, the Carlisle Packing Company is not liable for damages to Sandanger in excess of his wages and expenses incident to curing him, then under Section 24 of the Judicial Code no greater damages can be recovered in a common law action in the State Court.

Under Article III, Section 2 of the Constitution extending the judicial power of the United States

to all cases of admiralty and maritime jurisdiction, and Article I, Section 8 empowering Congress to make all laws necessary and proper for carrying into execution the powers vested in the Government, the Federal Courts were given jurisdiction in matters of admiralty, and a body of maritime law has been promulgated by the Federal Courts under which the petitioner contends that it could not be liable to the respondent in the situation presented by case at bar for any sum in excess of $175, the admitted cost of the respondent's cure.

The respondent, however, did not bring suit in the Federal Courts, but sued in the State court under a proviso of Section 24 of the Judicial Code (36 Stat. L. 1091), as follows:

> "Sec. 24. The district courts shall have original jurisdiction as follows: * * *
>
> "Third: Of all causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common-law is competent to give it. * * * "

The first question, which was raised by petitioner at all stages of the proceedings in the courts below, and which is involved in all of the specifications of error, is whether, assuming that recovery in the Federal courts would be limited to the cost of cure, any greater measure of liability can be allowed by the State court. Clearly it cannot.

As the respondent saw fit to select the common-law forum to enforce his remedy he is of necessity limited to the liability prescribed by the admiralty courts, as said by this court in Chelentis vs. Luckenbach S. S. Co., 247 U. S., 372, 384:

> "The distinction between rights and remedies is fundamental. A right is a well-founded or acknowledged claim; a remedy is the means employed to enforce a right or redress an injury. Bouvier's Law Dictionary. Plainly, we think, under the saving clause a right sanctioned by the maritime law may be enforced through any appropriate remedy recognized at common-law; but we find nothing therein which reveals an intention to give the complaining party an election to determine whether the defendant's liability shall be measured by common-law standards rather than those of the maritime law."

This language this court set out and approved in the case of Knickerbocker Ice Co. vs. Stewart, 253 U. S., 149, 159, saying:

> "Thus we distinctly approved the view that the original saving clause conferred no substantive rights and did not authorize the states to do so. It referred only to remedies, and to the extent specified permitted continued enforcement by the state courts of rights and obligations founded on maritime law."

For such a limitation of liability it is not necessary that there be express statutory authority fixing the measure of liability for injuries sustained by a seaman in the performance of a maritime contract. In Tullock vs. Mulvane, 184 U. S. 497, an action had been brought upon an injunction bond executed in an equity cause pending in a Federal court. The injunction bond was sued upon in a state court of Kansas. Under the local law the plaintiff was entitled to damages for attorney's fees expended by him in the proceeding in which the injunction was issued. The Kansas court permitted a recovery for such attorney's fees, contrary to the rules determining the measure of damages or recovery upon an injunction bond in the Federal courts. There was no statutory regulation upon the subject of injunction bonds in the Federal courts but the authority of the Federal courts in establishing the rule as to measure of damages was an authority exercised under the laws of the United States. This court held that the amount of the attorney's fees could not be recovered even in a state court. The reasoning in that case is clearly applicable to the facts in this case. The court said,

> "The test is not the particular source or form by which the authority of the United States has been conferred or is exerted, but whether such authority existed and was exercised and an immunity is claimed under it." (510)

The trial court in its instructions completely disregarded the principles of maritime law and treated the case as though the damages were to be determined according to common law principles (as will be developed later in this brief). The Supreme Court of the State of Washington erred in its interpretation of the maritime law, but apparently proceeded upon the theory of the petitioner (p. 163) that the respondent could recover no greater damages in a common law action in the State court than those allowed by maritime law.

(2) Admiralty would have had jurisdiction since Sandanger was a seaman.

In order to entitle the petitioner to the immunity claimed by it, this cause must be one over which admiralty would have jurisdiction, which would necessitate that respondent be engaged in a maritime employment at the time his injuries were received. It is the contention of the petitioner that respondent was so engaged.

That he was a member of the crew of the boat upon which he was injured and was engaged in part of his duties as such member of the crew when he received his injuries was pleaded in his complaint and referred to a number of times during the trial of the case, and seems to have been admitted without question (pp. 2, 3, 181). The respondent's own testimony is that at the time of his injuries he was acting under orders from the captain of the

boat (p. 183). He was performing services which were obviously in furtherance of the enterprise in which the boat was engaged.

This position was admitted without discussion by the Supreme Court of the State of Washington in its opinion (p. 163) where it says:

> "It does seem that respondent's employment and service on the day in question was maritime in its nature. We shall so assume in our disposition of the case, without further discussion of that question.
>
> The Minna, 11 Fed. 759;
> Saylor v. Taylor, 77 Fed. 476;
> Lawrence v. Flatboat, 84 Fed. 200;
> Domenico v. Alaska Packers Ass'n., 112 Fed. 554;
> The J. S. Warren, 175 Fed. 314;
> The Virginia Belle, 204 Fed. 692;
> North Alaska Salmon Co. v. Larsen, 220 Fed. 93."

Being a seaman under the decisions of the above cases it follows that admiralty would have exclusive jurisdiction over respondent's cause, except for the saving clause in Sec. 24 of the Judicial Code, *supra*, which saves to suitors of admiralty jurisdiction the right of a common-law remedy where the common-law is competent to give it, but which does not give a right to any damages not allowed by maritime law.

(3) By Maritime Law, for the injuries to Sandanger the Carlisle Packing Company was liable only to the extent of Sandanger's wages, maintenance and cure, unless his injury was received in consequence of the unseaworthiness of the ship or a failure to supply and keep in order the proper appliances appurtenant to the ship.

As stated by the Supreme Court of Washington (p. 163) the petitioner's contention is that the principles of maritime law as announced by Mr. Justice Brown in The Osceola, 189 U. S., 158, 175, are controlling, wherein he says:

> "Upon a full review, however, of English and American authorities upon these questions, we think the law may be considered as settled upon the following propositions:
>
> "1. That the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued.
>
> "2. That the vessel and her owners are, both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship.
>
> "3. That all the members of the crew, ex-

> cept perhaps the master, are, as between themselves, fellow servants, and hence seamen cannot recover for injuries sustained through the negligence of another member of the crew beyond the expense of their maintenance and cure.
>
> "4. That the seaman is not allowed to recover an indemnity for the negligence of the master or any member of the crew, but is entitled to maintenance and cure, whether the injuries were received by negligence or accident."

which principles were re-adopted by this court in the cases of:

> Southern Pacific vs. Jensen, 244 U. S., 205;
> Chelentis vs. Luckenbach S. S. Co., 247 U. S., 372;
> Knickerbocker Ice Co. vs. Stewart, 253 U. S., 149;

(4) Sandanger should not have recovered more than his maintenance and cure for negligence of the master.

The instruction to the jury set forth in the Fourth Specification of Error, was directly contrary to the law as set forth in the Fourth Proposition of Mr. Justice Brown in The Osceola, *supra*. The court in effect charged the jury that if the neg-

ligence was entirely that of the master, Sandanger could recover full compensation for his injuries. This instruction had nothing to do with the question of whether or not the ship was "unseaworthy." Under this instruction and the instruction contained in the Fifth Specification of Error, the jury did not have to consider the seaworthiness of the ship at all, but, in order to hold the Carlisle Packing Company to full indemnity, merely had to find that the master had been negligent in filling the can with gasoline when he might have "by a simple test found out whether it was coal oil or gasoline."

These instructions were squarely in conflict with The Osceola, *supra*, and with the case of Chelentis v. Luckenbach S. S. Co., 247 U. S. 372, where it was held that a seaman, who was washed overboard and his leg broken as a result of a negligent and improvident order given by a superior officer, could not recover damages at all as for negligence.

(5) The presence of gasoline in a can supposed to contain kerosene and used to help light a galley fire, would not render the ship unseaworthy, nor would it be a failure to supply and keep in order the proper appliances appurtenant to the ship.

The petitioner asked for an instruction on the question of seaworthiness which would have left it to the jury to say whether the vessel was reasonably fit to perform the service undertaken by the

master, but this instruction was denied (Eighth Specification of Error). It appears, therefore that the question of seaworthiness did not go to the jury at all, and that they decided the case solely on the question of the master's negligence, under the instruction contained in the Fourth Specification of Error.

The Supreme Court of the State of Washington affirmed the judgment on the ground that "respondent's recovery in this case may be sustained upon the theory that his injuries were received in consequence of the unseaworthiness of the boat upon which he was working" (p. 166), by reason of having gasoline in the can instead of kerosene. This holding is based on a proposition which never was before the jury. It is urged by the petitioner that there should have been an instructed verdict for $175, the agreed expense of cure, since there was no evidence of unseaworthiness, but if the court believed there was evidence of unseaworthiness an issue of fact was raised which should have been sent to the jury under proper instructions.

The theory of the Supreme Court of Washington goes far beyond any definition of "unseaworthiness" announced by the courts. To say that a ship is unseaworthy because there is gasoline in a coal oil can used to help light the galley fire, is simply a corruption of the word unseaworthy. Nor is the can "one of the proper appliances appurtenant to the ship," to use the words of the court in The Osceola, *supra*.

In The New York, 204 Fed. 764, the libelant was injured while filling oil cups in the engine room by his overalls catching in an uncovered revolving shaft. It was held that the steamer was not unseaworthy although the shaft was not boxed in.

In The Santa Clara, 206 Fed. 179, it was held that the failure to provide lights or hand-rails or other protection around the hatch did not render the ship unseaworthy.

In the case of Hanrahan vs. Pacific Transport Co., 262 Fed., 951, it was expressly held that the ship was not unseaworthy because of a temporary absence of a hand-rail while she was lying alongside the wharf discharging cargo, so as to entitle a seaman injured thereby to recover damages. In that case the plaintiff was a member of the crew, as in this case. The vessel being in port and face to the pier, plaintiff returned at night from shore leave, and while walking on the upper deck to his quarters, fell overboard, suffering personal injuries for which he brought his common law action. The reason why he was injured was that by the negligence of the ship's officers a certain hand-rail was not in place. This rail consisted of wire rope passing through stanchions, which were insertable in sockets built into the deck. It was erected to take the place of a bulwark. The court said that the jury might have found that the plaintiff's injuries were caused or contributed to by the absence of the hand-rail. Plaintiff asked to go to the jury on the theory that the vessel was unseaworthy by reason of the

failure of those in charge of her to maintain the hand-rail in place.

The Circuit Court said:

> "Every allegation of fact made by the plaintiff has been assumed, yet we hold that no jury could on such facts declare the ship unseaworthy * * * The contention confounds seaworthiness and safety, if not seaworthiness and comfort."

and affirmed the decision of the District Court directing a verdict for the defendant. Certiorari was denied, 252 U. S. 579, and this decision can fairly be considered as a final pronouncement on the question.

In The Santa Barbara, 263 Fed. 369, the libelant was ordered to put up certain ropes and chains which were used in connection with cleaning the smokestack. In doing this he was injured. The contention was that the ship was unseaworthy because the ropes and chains were not already in position. The case was dismissed, the court saying:

> "The chains were supplied; whether unseaworthiness would have resulted had that not been done is a matter not before us. Whether they should be 'maintained', or retained in the pulleys and left stretched along the guys contributing weight without strength while the steamer tossed at sea is a matter wholly with-

> in the discretion of the Captain. If that discretion was unwisely exercised, it was at most no more than his personal negligence in handling or mishandling good and proper appliances duly furnished by the owners. As nothing was defective in fit or materials and everything suggested as proper even by libelant's proctor, was provided for the ship, we hold that no unseaworthiness was shown." (p. 370.)

The analogy of this case to the case at bar is striking. In the case at bar if the owners provided both gasoline and kerosene and designated them properly or in a reasonably prudent manner, and the master could by a simple test have found out whether he was filling the can with gasoline or kerosene, (see Fourth Specification of Error), then it was a question of personal negligence in mishandling good and proper appliances duly furnished by the owner, and no unseaworthiness was shown.

(6) The Carlisle Packing Company could in no event be liable beyond the value of the vessel and the freight money for the current voyage.

There was error in refusing to instruct the jury in the alternative that the petitioner would not be liable for obligations arising on board a ship beyond the value of the vessel and the freight money

for the current voyage during which the debt or liability arose (Seventh Specification of Error).

This specification of error is predicated upon the theory that the court having refused to instruct the jury that the petitioner would be liable only for the balance remaining unpaid on the expenses of respondent's cure admitted to be $175.00, it should have instructed the jury in the alternative that petitioner's liability in any event should be limited to the value of the boat on which the injury occurred plus the freight money, if any, for the current voyage during which the liability arose, which was in this case undisputed to be not in excess of $1500.00 (p. 338).

Section 4283 R. S. provides:

> "The liability of the owner of any vessel, for any embezzlement, loss or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel or for any loss, damage or injury by collision or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel and her freight then pending."

Section 4289 R. S. provides:

"The provisions of the seven preceding sections and of section eighteen of an act entitled, 'An Act to remove certain burdens on the American merchant marine and encourage the American foreign carrying-trade, and for other purposes,' Approved June twenty-sixth, eighteen hundred and eighty-four, relating to the limitations of the liability of the owners of vessels, shall apply to all sea-going vessels, and also to all vessels used on lakes or rivers or in inland navigation, including canal-boats, barges, and lighters."

Under these sections it is believed that it can not be disputed that the boat upon which the accident occurred is one for which the owners are entitled to claim the limitations of liability provided therein.

That a motorboat comes within the meaning of the word "vessel" has been specifically held in the case of *The Alola*, 228 Fed. 1006. In that case an action was brought against the owner of the boat, a gasoline motorboat 45 feet 9 inches long with a 9 foot 8 inch beam, for damages resulting from the motorboat colliding with a rowboat, resulting in the death of one of the occupants of the rowboat. The court in its opinion says:

"The conclusion of the court on the testimony adduced is that the respondent is en-

titled to the benefit of the limitation of liability claimed by him."

That this statute limiting liability applies to cases of personal injury and death has been repeatedly held:

Butler v. Boston & Savannah Steamship Co., 130 U. S. 527.
Deslions vs. La Compagne Generale Transatlantique, 210 U. S. 120.
Ocean Steam Navigation Co. vs. Mellor, 233 U. S. 732.
White vs. Island Transportation Co., 233 U. S. 350.

That the limitation of liability prescribed extends to personal injuries of seamen has been specifically held. Craig v. Continental Ins. Co., 141 U. S. 638.

The statutory limitation of liability applies if the acts causing liability were done without the privity or knowledge of the owner of the vessel. When the owner of the vessel is a corporation this Court has declared that "the privity or knowledge must be that of the managing officers of the corporation." Craig v. Continental Ins. Co., 141 U. S. 638, 647. There is no evidence in this case that the managing officers of the petitioner were in any way privy to or had any knowledge of the acts upon which the liability of petitioner is based.

Therefore, even if the Court should hold that under maritime law the petitioner is liable in this case for the negligence of the master of the vessel we submit that the amount of such liability cannot, under the provisions of the statute referred to above, exceed the value of the vessel and her freight then pending.

CONCLUSION.

It is, therefore, urged that the decision of the Supreme Court of the State of Washington be reversed, with instructions that judgment be entered for the plaintiff below in the sum of One Hundred Seventy-five Dollars ($175).

Respectfully submitted,

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FEB 28 1922
WM. R. STANSBURY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1921

No. 195

CARLISLE PACKING COMPANY, *Petitioner,*

—VS.—

OLE SANDANGER, *Respondent.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF RESPONDENT

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—VS.—

OLE SANDANGER, *Respondent*.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF RESPONDENT

STATEMENT OF THE CASE

The facts necessary for the determination of this case sufficiently appear, we think, in the opinion of the Supreme Court of the State of Washington in the case of *Sandanger vs. Carlisle Packing Company*, 112 Wash. 480, and we shall, therefore, make no statement of our own.

We may say, however, at this point that petitioner in its brief for some reason has seen fit to call attention to conflicts in the evidence and in a few instances to state the evidence adduced by it in the trial court, without stating either that this testimony was contradicted or the contradicting evidence. For instance, it is said on page 5 of petitioner's brief that the captain testified:

> "that the can had not been refilled on the day of the seventh or subsequent to the time he filled it on the 6th with kerosene."

Now, the witnesses for respondent testified that all the coal oil or kerosene which was originally in the can on March 6th had been used up on the 6th, and there was not enough to light the lantern that evening (Record p. 86), and that on the morning of the 7th some one brought this coal oil can to the boat and placed it on board (Record p. 192).

But we shall not labor this proposition further, as the court will take as an indubitable fact the testimony of witnesses for respondent even though such testimony was contradicted by the witnesses for the petitioner.

ARGUMENT

Was the Vessel Seaworthy at the Commencement of the Voyage and Thereafter?

The basis of petitioner's argument is, as it necessarily must be, that Sandanger's contract of employment on the day of the injury was a maritime one; that the vessel on which he was employed was seaworthy, and that, in consequence, he cannot recover anything but the expenses of his maintenance and cure.

We shall here enter into no discussion as to whether Sandanger's contract of employment was maritime in its nature, or not, but shall assume that it was maritime.

Conceding that the contract of Sandanger was a maritime one it cannot nevertheless be disputed that he can secure an indemnity for injuries received by him "in consequence of the unseaworthiness of the ship or a failure to supply and keep in order the proper appliances appurtenant to the ship."

The Osceola, 189 U. S. 158, 175.

Pretermitting for the moment any discussion as to what constitutes seaworthiness of a vessel, we assert that the vessel must not only be seaworthy, but also must be so *at the commencement of the voyage*.

Sandanger was injured some time in the afternoon of March 7th. The vessel left on the contemplated voyage on the morning of that day. If the vessel was unseaworthy at the time she left on her contemplated voyage, then the judgment of the Supreme Court of the State of Washington must be affirmed.

In *The Lizzie Frank*, 31 Fed. 477, it is said:

> "On consulting the American authorities, we find it stated that the owner, among other obligation to the seaman, is bound to provide a seaworthy ship and that this means that at the *commencement* of a voyage the ship shall be furnished with all necessary and customary requisites for navigation, or, as the term is, shall be found seaworthy."

See also:

2 Parsons Shipping and Admiralty, p. 78.

Dixon vs. Ship Cyrus, 2 Pet. Adm. 407, 411.

Rice vs. Kitty, 2 Pet. Adm. 420.

The Ship Moslem, Olcott's Adm., 289.

The Caledonia, 157 U. S. 124.

Moreover, the law of England, which this court said in *The Osceola*, 189 U. S. 158, was the same as our own in this regard, provides as follows:

> "§458 (1). In every contract of service, express or implied, between the owner of a ship and the master or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any ship, there shall be implied, not-

withstanding any agreement to the contrary, an *obligation* on the owner of the ship, that the owner of the ship, and the master, and every agent charged with the loading of the ship, or the preparing of the ship for sea, or the sending of the ship to sea, shall use all reasonable means to insure the seaworthiness of the ship for the voyage at the time when the voyage *commences*, and to keep her in a seaworthy condition for the voyage during the voyage."

57 and 58 Vict. c. 60, commonly known as the Merchant's Shipping Act, 1894, and acts amendatory thereof.

Now, in the case at bar, as we have said, the voyage commenced at seven o'clock in the morning of March 7, 1917. At that time there was on board the boat a can labeled "coal oil," and which should have contained coal oil but in fact contained gasoline. Owing to the fact that at this season of the year it rains every day at Cordova, the wood placed on board the boat for cooking was wet and it was kept wet not only by the continual downpour of rain but also by the splash of the waves (Record p. 83). It was necessary therefore to use coal oil to start a fire in the cheap sheet iron stove on the boat (Record p. 82). Manifestly the crew must eat; the food be cooked; a fire built to cook the food; and coal oil used to start the fire. A container holding coal oil would therefore be a proper and *necessary* appliance of the ship at the *commencement* of the voyage. It follows that the having on board at the *com-*

mencement of the voyage of a container purporting to contain coal oil but in fact containing gasoline, rendered the vessel unseaworthy at that time and thereafter.

Suppose for the voyage in question the only food provided was tinned meat; that this tinned meat contained some poisonous ingredients; that the crew ate this meat and were poisoned, would not the owner of the boat be liable for an indemnity for injuries consequent upon eating the poisoned meat? Now if the owner is liable in the hypothetical case, why should he not be liable when at the commencement of the voyage he furnishes either no means or a deadly, dangerous means of preparing food? Cases squarely in point, perhaps, may not be found, but there are several which are very similar to this case and others which lay down the principle for which we contend.

In *Woolf vs. Claggett*, 3 Esp. 257, it appears that on the voyage of a Danish ship from Altonia to Surinam, the master became incapacitated by a severe fit of the gravel, and the mate was rendered incapable of doing his duty by an infected hand and arm. A surgeon had been employed by the owners and was on board throughout the voyage. This surgeon, however, was apparently not provided with a syringe, an instrument necessary to relieve the master, or a lancet with which to treat the mate. The owner, in an action on the insurance policy, the defense to which was that the ship had deviated, claimed that the deviation was necessary. Lord Eldon said:

"It was in evidence, that a surgeon was necessary in such voyages as the one insured: if, therefore, sickness was to be set up as an excuse for deviation, the plaintiff should shew that the surgeon was provided with such medicines and instruments as would probably become necessary in the course of the voyage, arising from the common casualties of mankind. He thought, in the present case that had not been done: the surgeon at Plymouth was proved to have lanced the arm. Had the surgeon on board no lancet? The medicines too furnished by him, were of the most common kinds; and it was even proved, that though the captain was afflicted with the gravel, the ship's surgeon was unprovided with a syringe, though an instrument so necessary for that complaint."

Now, if in order to render a boat seaworthy it is necessary that a syringe be furnished to the ship's surgeon, in order that he may treat a person who becomes afflicted with the gravel on the voyage, *a fortiori*, it is necessary in order to render a vessel seaworthy at the commencement of the voyage that safe means of starting a fire for cooking be supplied. In this case, the testimony is that the use of coal oil was a common, habitual and safe method by which to start a fire. Coal oil, however, was not supplied, but gasoline, an agency as dangerous as trinitrotoluol for this purpose, was furnished.

In *Fontaine vs. The Phoenix Insurance Company of New York*, 10 Johnson 58, the owner of the brig Eliza sued on two policies of insurance cover-

ing a vessel which had been captured by a British frigate. The defense was that the vessel was unseaworthy at the commencement of the voyage in that sufficient candles, wood and oil had not been placed aboard her at the place of departure. The court said:

> "A ship, to be seaworthy when she sails, must, among other things, be provided with all necessary stores for the voyage. From the deposition of the mate, it appears very clearly that the brig Eliza was not duly provided with the essential articles of fire-wood and oil, or candles. The great distress arising from the want of these articles, evidently retarded the voyage in the Bay of Biscay. She could not carry full sail at night, from the difficulty of seeing the compass; and if the weather had been dark and tempestuous, she would have been exposed to the greatest danger. She likewise kept wearing and tacking, in order to meet some vessel to relieve her distress; and her object, for some days, was rather searching for relief, than making the best of her way directly, diligently, and with full sail, for her port of destination. She lingered and delayed her voyage, in the Bay of Biscay, without any cause, other than what was imputable to the negligence of the master or owners. No reason is given why those articles failed; nor is it shown that she was duly supplied when she left port. It is unreasonable and unjust that the underwriters should be exposed to losses arising from such gross negligence in fitting out the ship. It is very probable that if the vessel had been seaworthy, she might have escaped the

capture; and the verdict on this point, is too plainly against evidence to be supported."

In Halsbury's Laws of England, Vol. 26, page 211, it is said:

> "To render the ship seaworthy in the strict sense of the word, she must, at the time of her departure, be in a fit state, as to repairs, equipment and crew, and in all other respects, to encounter the ordinary perils likely to be encountered on the particular voyage at the particular season of the year. * * * There is equally a breach of the condition where, though she is, at the time of her sailing, apparently efficient, she suffers from some defect which will show itself in the course of the voyage, so that she cannot, in fact, be regarded as efficient. Thus, she may not be furnished with a supply of coals, or provisions, or medicines, sufficient to last the whole voyage."

In *The Edith Godden*, 23 Fed. 43, a seaman on the steamship Edith Godden was injured while engaged in hoisting and lowering away from the steamship a fruit boat. The fruit boat was lowered by means of a derrick and in the course of the operation the hook that held the derrick in place broke and the boom, in falling, struck the libelant upon the shoulder. "An examination of the hook showed no defects in the iron at the place of breakage, and no apparent insufficiency." Judge Brown said:

> "There is no question that in modern maritime law the owners are responsible for due

care and diligence in the proper equipment of the vessel for the contingencies of the voyage. *Halverson vs. Nisen*, 3 Sawy. 562. See *The Explorer*, 20 Fed. 135. In the use of modern appliances, such as a steam-winch in connection with a derrick, as in this case, not for the prosecution of her ordinary navigation, but for the conveniences of the ship in loading or unloading, it is more *reasonable* and *equitable* to apply the analogies of the municipal law in regard to the obligation of owners and masters, rather than to extend the limited rule of responsibility under the ancient maritime law to these new modern conditions, for which those limitations were never designed. And, in applying the analogies of the municipal law, the *helplessness of seamen*, and the *imperative duty of obedience*, as I have above said, ought to impose upon masters and owners the highest rule of diligence and care in ascertaining the sufficiency of all such modern appliances for the exigencies to which they are to be subjected."

In *Olsen vs. Flavel*, 34 Fed. 477, a mate was injured while wheeling coal from the dock to the ship. The method employed by him was to place the coal in a wheel-barrow and wheel the same along a plank 18 inches wide from the dock to the ship. There was an iron chute on the dock by means of which the coal could have been sent down into the hold of the boat. Judge Deady found that the mate was negligent because he did not use the chute or in not constructing a safer gangway. He nevertheless held that the owner was liable for the injuries

to the mate, and this court, in the case of *The Osceola*, 189 U. S. 158, 174, states that the basis of the opinion of Judge Deady was that the owner had failed to provide a proper appliance and in consequence the case was one of *unseaworthiness.*

In the case of *The A. Heaton*, 43 Fed. 592, a seaman who was injured by reason of the fact that a portion of the rigging had become worn and weak by long use was permitted to recover an indemnity for his injuries. Judge Gray in writing the opinion stated that there was "no evidence that the owners sent the vessel to sea in an unseaworthy condition or were themselves negligent either in the selection of a master or otherwise." This court nevertheless held in *The Osceola*, 189 U. S. 174, that the case was one of unseaworthiness.

The Drummelton, 158 Fed. 454.

The Argo, 210 Fed. 872.

The Badger, 218 Fed. 81.

Olsen vs. Flavel, 34 Fed. 477.

The Julia Fowler, 49 Fed. 277.

The Frank & Willie, 45 Fed. 494.

Tavares vs. Dewing, 33 R. I. 434; 82 Atl. 137.

The cases cited by petitioner on pages 27 and 28 of its brief are not in point. Preliminarily, it

may be said that all of them were decided in the Second Circuit and the members of the Circuit Court of Appeals for the Second Circuit apparently have some doubt as to the correctness of the decision in the case of The Osceola. For in *The New York*, 204 Fed. 764, they say of that decision that "It is inconsistent with many prior and some subsequent decisions."

Again the rule announced in *The New York*, 204 Fed. 764, and *The Santa Clara*, 206 Fed. 178, is directly contrary to the rule announced by the Circuit Court of Appeals for the Ninth Circuit, in *The Argo*, 210 Fed. 872.

However all this may be, the real ground of decision in *The New York* and *The Santa Clara* was that the vessel was built and equipped in the *usual* way, but certainly it is not *usual* for ship owners to furnish gasoline to start a fire.

In *Hanrahan v. Pacific Transport Co.*, 262 Fed. 951, the libelant claimed that he was injured by reason of the negligence of the officers of the ship in failing to place a certain hand rail in place. There was no evidence, however, but that a hand rail was on board the boat and that it was sufficient for the purpose for which it was to be used. In order that the work of the ship could go on, this hand rail or gate would have to be removed from its place from time to time, and we are inclined to agree with the statement of Judge Hough, when he says that

"to say that this ship was unseaworthy because she had no handrail up, while lying alongside a wharf, discharging cargo, is merely untrue."

In that case, however, the owner furnished at the commencement of the voyage a seaworthy ship and proper appliances. The libellant in that case was injured by reason of the failure of the crew properly to use the appliances. In the case at bar a proper appliance was not furnished.

In *The Santa Barbara*, 263 Fed. 369, the libelant was ordered to "shin up" a guy, which aided in staying a smoke stack of the steamer, and reeve a rope through a pully block at the upper end thereof in order that there might be raised and lowered at will a boatswain's chair in which men might sit for cleaning and painting the stack. There was no contention in that case but that proper appliances had been furnished. The libelant climbed the guy and remained there for some ten or fifteen minutes; feeling tired he started to descend, lost his grip on the guy and fell to the deck. It is apparent that the injury in that case was due solely to libelant's overtaxing his strength, and no question of seaworthiness was therein involved.

Now no one will dispute that fuel is a part of the equipment of a vessel, but the only fuel provided on this vessel was thin, wet box wood which

would not burn except with the assistance of some other agency. (Record 97.)

The *usual* and *customary* agency in Alaska was coal oil.

The owner of this particular vessel recognizing this custom did provide a container for the coal oil and labeled the container in that way. The container, however, was not a proper appliance unless its content was coal oil. The jury found upon evidence which the Supreme Court of the State of Washington deemed proper, legal and sufficient, that the can contained *not* coal oil but gasoline.

It is urged here, however, that the cause of Sandanger's injury was that the master of the vessel negligently filled the coal oil can with gasoline. There is grave doubt if the master was negligent. He procured this oil from a drum placed in the petitioner's oil house located on land. In this oil house were two drums placed side by side and which in outward appearance were exact duplicates. They were of the same size and color. They contained no markings showing what their contents were. (Record, pp. 44, 45, 49, 53, 57, 63, 98, 105, 107.)

True, petitioner sought to show in the trial court that gasoline was *not* kept in the oil house; that gasoline *was* kept in the oil house but in five-gallon cans; that the drums containing coal oil and gasoline were marked so as to indicate their con-

tents; that it was against the law to keep gasoline in a drum unless the drum was so marked. The jury, however, did not believe this testimony.

It would seem that the master was not really at fault if the drums were the same size and color and contained no indication of what their contents were.

But even assuming for the sake of the argument that the master was negligent, yet nevertheless his negligence was antecedent to the commencement of the voyage on March 7th. It is the owner's duty, however, to furnish a seaworthy boat at the commencement of the voyage and if he fails to do so he is liable.

In *The Drumelton*, 158 Fed. 454, it is said:

> "It is, however, ingeniously argued, that because the defectively fastened cleat was in and of itself a good cleat, fastened with good spikes and put in place by the officers of the ship themselves, the fastening of this good cleat with good spikes to a weak piece of wood was negligence, and no more. This proves too much, for it would necessarily follow that an owner might hand his vessel over to the master and officers incomplete in numerous minor, but vital details, leaving it to them to finish the ship, and then claim, if defects appeared, that the vessel was not unseaworthy, because the defective workmanship resulting from the labors of the master and officers was no more than negligence in the operation or management of the vessel. This cannot be."

Petitioner Cannot Avail Itself of the Benefit of Sections 4283, 4289, Revised Statutes

Another contention is attempted to be founded on Sections 4283, 4289, Revised Statutes. It can be shortly answered. No pleading of any kind setting up this defense was ever filed. No mention of this defense was made in the answer. During the course of the trial the President of the Carlisle Packing Company testified, over objection that it was immaterial and irrelevant, that if the vessel on which Sandanger was injured was 28 feet long, she was worth *about* $1500 (Record p. 338). This alleged defense was *not* made a ground for a directed verdict (Record p. 361), but it is true that an instruction in conformity with this contention was requested (Record p. 18). No mention, however, of this defense was made in the motion for judgment non obstante nor in the motion for a new trial, nor was this particular matter presented to the Supreme Court of the State of Washington.

This court will observe that the Supreme Court of the State of Washington does not mention this contention and it will not be asserted in this court that any argument was made thereon to the Supreme Court of the State of Washington. The petition for writ of certiorari to this court and the brief accompanying it are void of any reference to Sections 4283 and 4289, Revised Statutes, or the value of the boat. The insistence in both petition and brief is that respondent was entitled to recover

the sum of $175.00 and no more. The basis for that contention was that "there was no evidence in the Record tending to show any unseaworthiness" (Petition p. 12), but that nevertheless the Supreme Court of the State of Washington had held that the vessel was unseaworthy. This particular defense, of course, admits that the boat was unseaworthy, but that liability should be limited.

Again it is insisted in both petition for writ of certiorari and the brief accompanying the same, that the petition should be granted because the question involved was one of great importance. Now, if there was an important question involved in this case, what was it? The answer clearly is that the Supreme Court of the State of Washington had erred in holding that the vessel was unseaworthy, not in failing to limit the liability of the owners for furnishing an unseaworthy boat. Parenthetically, it may be said that since the passage of the Act of Congress of June 5, 1920, commonly known as the Merchant Marine Act (41 St. at L., p. 1007), any question involved in this case has ceased to be important.

In any event, it would seem plain that if any such question was ever involved in this case, it had been waived by failure to present same to the Supreme Court of the State of Washington.

Despite all the foregoing, it is nevertheless clear that this defense is not available here to the petitioner. We may agree that a ship owner may

limit his liability even when only one claim is involved; that a motor boat comes within the meaning of the word "vessel" as used in the Limitation of Liability Act; that that Act applies to cases of personal injuries and death of seamen; and that advantage of the Act may be taken in the action brought in the State court. But we assert that if advantage of the Act is desired, the question must be raised by answer.

In *The Maria and Elizabeth*, 11 Fed. 520, it is said:

> "Where the owners may invoke the provisions of the section, the court cannot know, *without appropriate proceedings* the value of the offending vessel and the pending freight. If the owners desire to claim the benefit of the limitation of liability, the duty is upon them to *take affirmative steps* to secure it. It was perhaps doubtful what these steps should be, or how they should be taken, until the promulgation of rules 54, 55, 56 and 57, in admiralty, growing out of the case of *Norwich Co. v. Weight*, 13 Wall. 125. Since then there has been no doubt."

In *The Rosa*, 53 Fed. 132, Judge Brown said:

> "The limitation of responsibility provided by law can be as fully and as readily secured in a common-law suit, as in this court, where there is but a single claim against the vessel, or her owners. All that is needed in either court is an *answer* setting up the limitation of liability

under Section 4283 of the United States Revised Statutes, with a statement of the value of the owners' interest in the vessel and her freight pending." (Italics are the court's.)

See also:

The Great Western, 118 U. S. 520, 525;

The Scotland, 105 U. S. 24, 33.

This defense, then, may be availed of by the owner only by *appropriate proceedings*. If the owner does not desire to file a petition for limitation of liability, but desires to raise this question in the suit brought against him or his vessel, he may do so by filing an answer or pleading, but the method here adopted was not an appropriate proceeding. The respondent was never advised that any such question would be raised. He was wholly unprepared to show the value of the vessel or her pending freight.

We submit that the judgment of the Supreme Court of the State of Washington should be affirmed.

MAURICE McMICKEN,
Counsel for Respondent.

CHADWICK, McMICKEN, RAMSEY & RUPP,
Of Counsel.

absence of life preservers, *held*, that error in submitting the case to the jury on the theory of the owner's negligence was harmless, since the facts as found by the jury warranted the recovery upon the ground of unseaworthiness. P. 259.

5. When there is only one possible claimant and one vessel owner, the privilege of limited liability accorded by Rev. Stats., § 4283, may be claimed in a state court by proper pleading; but the claim is too late when first presented by a request for a charge to the jury. P. 260.

112 Wash. 480, affirmed.

CERTIORARI to a judgment of the Supreme Court of the State of Washington, affirming a judgment rendered by a trial court against the present petitioner in an action brought by the respondent to recover damages received while serving as a seaman on board the petitioner's vessel.

Mr. J. Harry Covington, with whom *Mr. James A. Kerr* *Mr. Evan S. McCord* and *Mr. Joseph N. Ivey* were on the brief, for petitioner.

If under the maritime law, whether found in federal statutes or in decisions of federal courts, the petitioner is not liable for damages to respondent in excess of his wages and expenses incident to curing him, then under § 24, Jud. Code, no greater damages can be recovered in a common-law action in the state court.

Admiralty would have had jurisdiction, since respondent was a seaman.

By the maritime law, for the injuries to respondent the petitioner was liable only to the extent of respondent's wages, maintenance and cure, unless his injury was received in consequence of the unseaworthiness of the ship or a failure to supply and keep in order the proper appliances appurtenant to the ship. *The Osceola*, 189 U. S. 158, 175.

Respondent should not have recovered more than his maintenance and cure for negligence of the master. *The Osceola, supra; Chelentis* v. *Luckenbach S. S. Co.*, 247 U. S. 372.

The presence of gasoline in a can, supposed to contain kerosene and used to help light a galley fire, would not render the ship unseaworthy, nor would it be a failure to supply and keep in order the proper appliances appurtenant to the ship. *The New York*, 204 Fed. 764; *The Santa Clara*, 206 Fed. 179; *Hanrahan* v. *Pacific Transport Co.*, 262 Fed. 951; s. c., certiorari denied, 252 U. S. 579; *The Santa Barbara*, 263 Fed. 369.

The petitioner could in no event be liable beyond the value of the vessel and the freight money for the current voyage. Rev. Stats., §§ 4283, 4289; *The Alola*, 228 Fed. 1006; *Butler* v. *Boston & Savannah S. S. Co.*, 130 U. S. 527; *La Bourgogne*, 210 U. S. 95, 120; *Oceanic Steam Navigation Co.* v. *Mellor*, 233 U. S. 732; *White* v. *Island Transportation Co.*, 233 U. S. 350; *Craig* v. *Continental Insurance Co.*, 141 U. S. 638.

Mr. Maurice McMicken, for respondent, submitted.

Mr. Justice McReynolds delivered the opinion of the court.

The Supreme Court of Washington affirmed a judgment against petitioner Packing Company rendered by the trial court upon a verdict for damages on account of injuries which respondent suffered while employed upon petitioner's motor boat afloat in navigable Alaskan waters.

Respondent claimed that, prior to the departure of the boat upon a trip intended to occupy perhaps six or eight hours, petitioner or its agents negligently filled with gasoline and placed thereon a can which ordinarily contained coal oil (and was so labelled) for use according to the prevailing custom in those waters to start fires in the small stove where meals were cooked and water heated. Without knowledge of the substitution, respondent poured the gasoline upon the fire wood, applied a match, an explosion resulted and he was badly burned. He further

claimed that no life preservers had been placed on board and that his injuries were aggravated by delay attending search for one before he jumped into the water to extinguish his flaming clothes.

The trial court held "the basis of the action is negligence," and instructed the jury according to the common-law rules in respect thereto. It said that if petitioner or its authorized agents negligently filled the can with gasoline and placed it upon the boat, and if by reason of such negligence respondent suffered injury, he was entitled to recover compensatory damages therefor, provided he himself had not been guilty of contributory negligence. Further, that if the injuries resulting directly from the explosion were aggravated because no life preservers had been placed on board, then additional compensation could be awarded for such aggravation. Also that if the explosion occurred without petitioner's negligence but the absence of life preservers caused aggravation of respondent's injuries, he would be entitled to recover for such injuries as resulted directly from the negligence in respect of the life preservers but not for those caused solely by the explosion.

We have heretofore announced the general doctrine concerning rights and liabilities of the parties when one of a crew sustains injuries while on a vessel in navigable waters.

"The vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued.

"The vessel and her owner are, both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship.

"All the members of the crew, except perhaps the master, are, as between themselves, fellow servants, and hence

seamen cannot recover for injuries sustained through the negligence of another member of the crew beyond the expense of their maintenance and cure.

"The seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew, but is entitled to maintenance and cure, whether the injuries were received by negligence or accident." *The Osceola*, 189 U. S. 158, 175; *Chelentis* v. *Luckenbach S. S. Co.*, 247 U. S. 372, 380, 381.

The general rules of the maritime law apply whether the proceeding be instituted in an admiralty or common-law court. *Chelentis* v. *Luckenbach S. S. Co., supra; Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149, 159.

Here the trial court did not instruct the jury in consonance with these rules, and by failing so to do, fell into error.

But mere error without more is not enough to upset the judgment, if the record discloses that no injury could have resulted therefrom. *West* v. *Camden*, 135 U. S. 507, 521.

Considering the custom prevailing in those waters and other clearly established facts, in the present cause, we think the trial court might have told the jury that without regard to negligence the vessel was unseaworthy when she left the dock if the can marked "coal oil" contained gasoline; also that she was unseaworthy if no life preservers were then on board; and that if thus unseaworthy and one of the crew received damage as the direct result thereof, he was entitled to recover compensatory damages. *The Silvia*, 171 U. S. 462, 464; *The Southwark*, 191 U. S. 1, 8. The verdict shows that the jury found gasoline had been negligently placed in the can or that through negligence no life preservers were put on board, or that both of these defaults existed, and that as a result of one or both respondent suffered injury without contributory negligence on his part. In effect the charge was more favorable to the petitioner than it could have de-

manded, and we think no damage could have resulted from the erroneous theory adopted by the trial court. *The Caledonia*, 157 U. S. 124, 131; *Thompson Towing & Wrecking Association* v. *McGregor*, 207 Fed. 209, 211.

Petitioner asked an instruction that § 4283 of the Revised Statutes [1] applied, and that under it the verdict could not exceed the value of the vessel. In a state court, when there is only one possible claimant and one owner, the advantage of this section may be obtained by proper pleading. *The Lotta*, 150 Fed. 219, 222; *Delaware River Ferry Co.* v. *Amos*, 179 Fed. 756. Here the privilege was not set up or claimed in the answer, and it could not be first presented upon request for a charge to the jury.

The judgment below must be

Affirmed.

MR. JUSTICE CLARKE concurs in the result.

CARLISLE PACKING COMPANY *v.* SANDANGER.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

No. 195. Argued March 24, 1922.—Decided May 29, 1922.

1. According to the general maritime law, a seaman injured in the service of the ship on navigable waters may recover indemnity from the ship or her owner if the injuries were in consequence of her unseaworthiness, but not upon the ground of the negligence of the master or any member of the crew. P. 258.
2. These rules apply whether the suit be in an admiralty or in a common-law court. P. 259.
3. Irrespective of negligence, a motor boat is unseaworthy if not equipped with life preservers or if, when she leaves the dock, on waters where there prevails a custom to start galley fires by means of coal oil, a can marked "coal oil" is filled with gasoline. P. 259.
4. Where a seaman recovered a verdict of compensatory damages for injuries by fire, due to the presence of gasoline in a can usually containing coal oil employed in starting a stove, and due to the